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CUSTOMS. EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
SINGLE MEMBER APPEAL BRANCH

Appeal No. E/3960/2006 WITH E/ CO/ 272 /2007-ASM[BR] Date 12/06/2008

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
C.C.E. KANPUR
117/7, SARVODAYA NAGAR, KANPUR

C.C.E. KANPUR Appellant

Vs

M/S RAVI AGRICULTURE IND. Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 911 /2008 –SM[BR] dated 2.6.2008

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar

(SM Appeal Branch)

Copy to :

1. Respondent

   M/S RAVI AGRICULTURE IND.

   HATHRAS ROAD, AGRA.

2. Adv. / Consult SHRI R.P. PAL ADV.
   29/207 F, SANJAY PLACE, AGRA.

3. S.D.R.
4. ~~J.C.D.R.~~
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017
7. M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12. Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai 60017
13. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH NEW DELHI

Excise Appeal No.3960 of 2006 –SM (BR)
With E/CO/272/07-SM (BR)

[Arising out of Order-in-Appeal No.510-CE/APPL/KNP/2006 dated 18.10.2006 passed by the Commissioner of Central Excise (Appeals), Kanpur]

Date of Hearing/ Decision:2.6.2008

For approval and signature:

Hon'ble Mr. P.K. Das, Member (Judicial)

1. Whether Press Reporters may be allowed to see CESTAT (Procedure) Rules, 1982.		
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:	No
3. Whether Their Lordships wish to see the fair copy of the Order?	:	
4. Whether Order is to be circulated to the Departmental authorities?	:	

CCE, Kanpur ...Appellants
[Rep. by Shri S.L. Meena, DR]

Vs.

M/s. Ravi Agriculture Industry ...Respondent
[Rep. by Shri R.P. Pal, Advocate.]

CORAM: **Mr. P.K. Das, Member (Judicial)**

Final Order No. 911/08-SM Dated:02.06.2008

Per P.K. Das:

The relevant facts of the case, in brief, are that the Respondents are engaged in the manufacture of Diesel Engines & Pumps, C.I. Casting, T.R. Bearing, etc. On 2.12.2004, the Central Excise Officers visited the Respondent's factory and conducted stock verification. The Central Excise Officers ascertained shortage of raw materials and finished goods. Shri Dilip Kumar Mukherji, Authorised Signatory of the Respondent admitted the shortage and debited the duty on the shortage immediately. The Adjudicating Authority confirmed the demand of duty of Rs.77,005.00 and appropriated the said amount as deposited by them. He also imposed penalty of equal amount under Section 11 AC of the Central Excise Act, 1944. The Commissioner (Appeals) set aside the penalty imposed under Section 11 AC of the Act. Hence, the Revenue filed this appeal before the Tribunal.

2. Ld. DR on behalf of the Revenue reiterates the grounds of appeal. He submits that the Respondent admitted the shortage and has not given any explanation to the shortages. He further submits that it is presumed that the goods were clandestinely removed and, therefore, imposition of penalty under Section 11 AC of the Act is justified.

3. Ld. Advocate on behalf of the Respondent reiterates the findings of the Commissioner (Appeals). He submits that there is no material for clandestine removal of the goods and, therefore, imposition of penalty under Section 11 AC can not be sustainable. He further submits that the

Respondent deposited the duty immediately upon detection long before issue of the show cause notice and no penalty can be imposed. He relied upon the decisions f the Hon'ble High Court as under:-

(a) Commissioner of Central Excise, Ludhiana Vs.
Sigma Steel Tubes
2007 (218) E.L.T. 657 (P &H)

(b) Commissioner of Centrla Excise, Ludhiana Vs.
Omkar Steel Tubes (P) Ltd.

(c) J.M. Perfumary Vs. CCE, Vapi
2007 (216) ELT 625 (Tribunal-Ahmd.)

4. After hearing both the sides and on perusal of the records, I find that the shortage was detected during stock verification. The Respondent deposited the duty after detection of the shortage. No inquiry was made by the Revenue for the shortages of the goods. Ld. DR's contention is based on the presumption. Revenue failed to produce any evidence for clandestine removal of the goods. So, the Commissioner (Appeals) rightly set aside the penalty under Section 11 AC of the Act. I do not find any reason to interfere the order of the Commissioner (Appeals). The appeal filed by the Revenue is rejected.

Order dictated & pronounced in open court on 02.06.2008.

(P.K. Das)
Member (Judicial)

Ckp.