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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/1916/200-SM[BR]

Date 25/06/2008

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

To :
M/S ADARASH PAPER FABRIC LTD,

9TH NEW KAVI NAGAR GHAZIABAD

M/S ADARASH PAPER FABRIC LTD, Appellant

Vs

C.C.E. MEERUT I Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 990 /2008 –SM[BR] dated 5.6.2008

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

Assistant Registrar

(SM Appeal Branch)

Copy to :
1. Respondent

   C.C.E. MEERUT I

   EXCISE CHOWK, UNIVERSITY ROAD, MANGAL PANDEY NAGAR, MEERUT - 250005.
2. Adv. / Consult

   MR.RAJESH CHHIBBER

   FA/9, NEW KAVI NAGAR, GHAZIABAD

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.1916 of 2006 –SM (BR)

[Arising out of Order-in-Appeal No.242-CE/MRT-I/05 dated 6.12.2005 passed by the Commissioner of Central Excise (Appeals), Meerut-I]

Date of Hearing/ Decision:5.6.2008

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? :
3. Whether Their Lordships wish to see the fair copy of the Order? :
4. Whether Order is to be circulated to the Departmental authorities? :

N

M/s. Adarsh Paper Fabric Ltd. ....Appellants
[Rep. by Shri R. Chhibher, Advocate]

Vs.

CCE, Meerut-I ....Respondent
[Rep. by Shri S.L. Meena, DR]

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

Final Order No. 990/08-SM(BR)/Dated:5.6.2008

Per P.K. Das:

The relevant facts of the case, in brief, are that on 9.4.2003, the Central excise Officers visited the Appellant's factory and conducted stock verification. The Central Excise Officers ascertained shortage of consumable inputs, wherein Cenvat credit was availed. Shri Manish Kapoor, Director of the Appellant-Company in his statement before the officers accepted the shortage but failed to explain the reasons for the shortage. The Appellant deposited the duty on 10.04.2003. The Adjudicating Authority confirmed the demand of duty and appropriated the amount as deposited by them. He also imposed penalty of equal amount under Section 11 AC of the Central Excise Act, 1944, which is upheld by the Commissioner (Appeals).

2. After hearing both the sides and on perusal of the records, I find that the shortage was detected during the stock verification but there is no material to prove the clandestine removal of the goods. The Director of the Company accepted the shortage and deposited the duty. I find that in the facts and circumstances of the case, imposition of penalty under Section 11 AC of the Act is not justified. The Hon'ble Punjab & Harayana High Court in the case of CCE Vs. S.B. Packaging – 2008 (223) ELT 360 (P&H) held that duty was paid before issuance of the show cause notice and there is no evidence of intention to evade duty and Section 11 AC of the Act cannot be invoked. In view of that, I find that the penalty imposed under Section 11AC of the Act is not sustainable. Accordingly, the penalty is set aside and the appeal is allowed.

Order dictated & pronounced in open court on 5.6.2008.

(P.K. Das)
Member (Judicial)

Ckp.