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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/2627/2006, & 2701/2006 -SM[BR]   Date 22/07/2008

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

To :
1-2) M/S NARENDRA PRODUCTS
12/5 GHAR KALE KHAN NAI KI MANDI, AGRA, U.P.

M/S NARENDRA PRODUCTS   Appellant
Vs
C.C.E. KANPUR   Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1066- 1067 /2008 -SM[BR] dated 30.5.2008 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. KANPUR
   117/7, SARVODAYA NAGAR, KANPUR 208005.
2. Adv. / Consult
   MR. BIPIN GARG ADV.
   B-1 /1289-A, VASANT KUNJ NEW DELHI 110070
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 Appeals No.2627 & 2701 of 2006 –SM (BR)

[Arising out of Order-in-Appeal No.142-CE/APPL/KNP/06 dated 14.03.06 passed by the Commissioner of Central Excise (Appeals), Nagar Kanpur]

Date of Hearing/ Decision:30.5.2008

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? :

NA

Appeal No.2627 of 2006-SM (BR)

M/s. Narendra Products ...Appellants

Vs.

CCE, Kanpur ....Respondent

Appeal No.2701of 2006-SM (BR)

CCE, Kanpur ...Appellants

Vs.

M/s. Narendra Products ....Respondent

Shri Bipin Garg, Advocate on behalf of the Assessee.
Shri A.K. Rastogi, Authorized Departmental Representative for Revenue.
CORAM: **Mr. P.K. Das, Member (Judicial)**

Final Order No.1066 & 1067/08-SM (BR)/Dated:30.5.2008

Per P.K. Das:

Both the appeals are arising out of a common order and, therefore, both are being taken up together for disposal.

2. The relevant facts of the case, in brief, are that the assesses are engaged in the manufacture of Gutka and Pan Masala classifiable under sub-heading No.2404.49 and 2106.00 of the Schedule to the Central Excise Tariff Act, 1985. On 10.03.2004, the Central Excise Officers, visited the assessee's factory premises and conducted stock verification. The Central Excise officers ascertained shortage of finished goods against the balance of RG-1 register. The Representative of the assessee admitted the shortage and stated that the shortage was occurred for the reason that the Authorized Signatory had left the office due to Holi festival and, therefore, they cleared the finished goods without payment of duty. The assessee immediately deposited the entire amount of duty on the same day. The Adjudicating Authority confirmed the demand of duty of Rs.2,51,549/- and appropriated the said amount as deposited by them. He also imposed the penalty of equal amount under Section 11 AC of the Central Excise Act, 1944 and Rule 25 of the Central Excise Act, 2000 separately. The Commissioner (Appeals) modified the Adjudication Order to the extent that the penalty under Section 11 AC was set aside and penalty under Rule 25 was reduced to Rs.65,000/- (Rupees Sixty Five Thousand only). The assessee filed the appeal for

setting aside the penalty. Revenue filed this appeal for enhancement of the penalty.

3. Ld. Advocate on behalf of the assessee submits that there is no material for clandestine removal of the goods. He further submits that the Representative of the assessee explained the reasons for shortage and deposited the duty voluntarily long before issue of the show cause notice. So, penal provisions cannot be invoked. He relied upon the decisions of the Hon'ble High Court as under:-

(a) Commissioner of Central Excise, Ludhiana
Vs. Sigma Steel Tubes
Reported in 2007 (218) ELT 657 (P & H)

(b) Commissioner of Central Excise Vs. Malbro Appliances P.Ltd.
Reported in 2007 (208) ELT 503 (Delhi)

4. Ld. DR on behalf of the Revenue reiterates the findings of the Adjudicating Authority. He submits that the assessee cleared the goods without payment of duty and, therefore, Section 11AC of the Act should be invoked. He further submits that the goods were cleared without payment of duty, which amounts to clandestine removal of the goods and, therefore, separate penalty on both the provisions would be imposible.

5. After hearing both the sides and on perusal of the records, I find that the shortage was detected during the stock verification. The assessee admitted the shortage and explained that the materials were removed without payment of duty. So, it is a case of clandestine removal of the goods. I agree with the contention of the ld. DR that the penalty is

imposable under Section 11 AC of the Act. It is seen that the assessee deposited the duty before issue of the show cause notice. The Hon'ble Delhi High Court in the case of Malbro Appliances P. Ltd. (supra) held that in terms of first proviso to Section 11 AC, if duty determined is paid within 30 days of passing such order, penalty would be 25% of duty. In that case, the Hon'ble High Court upheld the order of the Tribunal whereby penalty was imposed 25% of the duty as duty was deposited before show cause notice.

6. In view of the above discussion, the impugned order is modified in so far as imposition of penalty under Section 11 AC is upheld. However, the Appellant deposited the duty before issue of the show cause notice and the amount of penalty is reduced to Rs.65,000.00 (i.e. 25% of the duty approximately). So, there is no merit on imposition of penalty under Rule 25 of the Rules. Hence, the penalty under Rule 25 of the Rules is set aside. Both the appeals are disposed of in the above terms.

Order dictated & pronounced in open court on 30.5.2008.

(P.K. Das)
Member (Judicial)

Ckp.