

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/3940/2006-SM[BR]

Date 28/07/2008

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

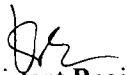
To :
C.C.E. KANPUR
117/7, SARVODAYA NAGAR, KANPUR
208005
C.C.E. KANPUR

Appellant

Vs
Respondent

M/S VACMET PACKAGINGS(INDIA) PVT. LTD.

I am directed to transmit herewith a certified copy of **Final order** No. 1092 /2008 –SM [BR] dated 25.6.2008
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 VACMET PACKAGINGS(INDIA) PVT. LTD.

B-5, SITE-A, UPSIDC INDUSTRIAL AREA, SIKANDRA, AGRA.

2. Adv. / Consult SHRI K.K.ANAND ADV.

A -5, BASMENT LAJPAT NAGAR –III
NEW DELHI -24

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 Publications (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)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO.II

E/Appeal No. 3940/06-SM

(Arising out of order in appeal No.502/CE/Apl/KNP/06 dated 13.10.06
passed by the Commissioner of Central Excise (Appeals), Kanpur)

For approval and signature:

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

1. Whether Press reporters may be allowed to see the order for publication as per Rule 27 of the 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?

M

CCE, Kanpur

Appellant
(Rep. by Shri S.L. Meena, DR)

Vs

M/s Vacmet Packagings (India) Pvt Ltd Respondent
(Rep. by Shri Hemant Bajaj, Advocate)

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

Date of Hearing: 25.6.08

Final Order No. 1092 /2008-SM(BR)

Per P.K. Das:

The relevant facts of the case as on record, in brief, are that the respondents were engaged in the manufacture of Rigid PVC Plain Films, Metallised Polyester Films. On 16.3.2005, the Central Excise officers visited

the factory of the respondents and conducted stock verification. The Central Excise officers ascertained the shortage of finished goods. The respondents immediately deposited the duty while admitting the shortage. The Adjudicating Authority confirmed the demand of duty of Rs.63,452/- and appropriated the said amount as deposited by them. He also imposed penalty of equal amount under Section 11AC of Central Excise Act, 1944. The Commissioner (Appeals) set aside the penalty imposed under Section 11AC of the Act. Hence the Revenue filed this appeal.

2. The learned DR on behalf of the Revenue submits that the Commissioner (Appeals) set aside the penalty following the decision of the Larger Bench of the Tribunal in the case of CCE Vs Machino Montell (I) Ltd reported in 2004 (168) ELT 466 (Trib. LB). He further submits that the Commissioner (Appeals) had not considered the merits of the case and proceeded on the basis that respondents deposited the duty before issue of show cause notice.

3. The learned Advocate submits that there is no allegation of clandestine removal of goods. He further submits that the Hon'ble Punjab & Haryana High Court in the case of CCE Ludhiana Vs Omkar Steel Tubes (P) Ltd reported in 2008 (221) ELT 200 (P&H), after considering the decision of Larger Bench of the Tribunal in the case of Machino Montell (I) Ltd (supra) held that the Authority under the Act must record a finding that non-levy of duty or short levy of duty was actuated by intention to evade payment of duty.

4. After hearing both the sides and on perusal of the record, I find that the Adjudicating Authority observed that the appellants paid the duty on the

shortage upon detection during stock verification. I do not find any material for clandestine removal of goods. It is revealed from the order of the Commissioner (Appeals) that the authorized signatory could not explain any reason for shortage. It is seen that the shortage was detected during stock verification and there is no material to appreciate the clandestine removal of goods. As such, the imposition of penalty under Section 11AC is not justified. I find that the Hon'ble Punjab & Haryana High Court in the case of Omkar Steel Tubes (P) Ltd (supra) after considering the decision of Machino Montell (supra) held that in such situation, penalty imposed under Section 11AC of the Act is not warranted. Revenue has failed to produce any evidence of clandestine removal of material by the respondents. So, I do not find any reason to interfere with the order of the Commissioner (Appeals). Accordingly, the appeal filed by the Revenue is rejected.

(Order dictated and pronounced in the open Court).

MPS*

(P.K. Das)
Member(Judicial)