TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

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/3958/2006-3959/2006 WITH CROSS/ 269-270/2007 Date 25/08/2008

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 P & J AROMATICS (UNIT- II) Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1172 – 1173 / 2008 –SM[BR] dated 16.7.2008

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 P & J AROMATICS (UNIT- II)

GEETA NAGAR, BALKESHWAR, AGRA

2. Adv. / Consult Shri Rajendra Prasad Tal 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. Easy Service Tax Online Dot Com Pvt. Ltd. 407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad - 15
15. Office Copy
16. Guard file

1 SH. YOGENDRA KR. SINGHAL, AUTH SIGNATORY,
GEETA NAGAR,BALKESHWAR, AGRA.

Assistant Registrar
(SM Appeal Branch)

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

PRINCIPAL BENCH NEW DELHI

Excise Appeals Nos.3958-59/06 with
Cross/269-270 of 2007-SM (BR)

[Arising out of common Order-in-Appeal No.511 & 512-CE/APPL./KNP/2006 dated 18.10.2006 passed by the Commissioner of Central Excise, Kanpur]

Date of Hearing/ Decision:16.07.2008

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

CCE, Kanpur ...Appellants
[Rep. by Shri B. S. Suhag, DR]

Vs.

(1) M/s. P & J Aromatics (Unit-II)
(2) Shri Yogendra Kumar Singhal
Authorised Signatory ...Respondents
[Rep. by Shri R. Pal, Advocate]

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

Final Order No. 1172-1173/2008-SM(BR) Dated:16.07.2008

Per P.K. Das:

Revenue filed these appeals against the order of the Commissioner (Appeals), whereby penalty imposed equal to the amount of duty on the Respondent No.1 and penalty of Rs.10,000/- on the Respondent No.2 were set aside.

2. After hearing both the sides and on perusal of the records, it is seen that the Commissioner (Appeals) set aside the penalties on the ground that the Respondents paid duty before issue of show cause notice.

3. Ld. DR submits that it is a case of clandestine removal, which was not examined by the Commissioner (Appeals) and, therefore, the order passed by the Commissioner (Appeals) is erroneous. The Hon'ble Punjab & Haryana High Court in the case of Commissioner of Central Excise, Ludhiana Vs. Omkar Steel Tubes (P) Ltd. Reported in 2008 (221) ELT 200 (P&H) held that mere fact that duty has been paid before issuance of show cause notice would not result into non-application of Section 11 AC of the Central Excise Act, 1944 and penalty could still be imposed as long as various elements envisaged by Section 11 AC of the Act are satisfied including presence of mens rea.

4. In view of the decision of the Hon'ble Punjab & Haryana High Court, I set aside the impugned order and the matter is remanded back to the Commissioner (Appeals) to pass the order after examining the facts and law of the case. The Commissioner (Appeals) shall provide opportunity of hearing before decision. Both the appeals are allowed by way of remand.

Order dictated & pronounced in open court on 16.7.2008.

(P.K. Das)
Member (Judicial)

Ckp.