

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/12 /2007-SM[BR]

Date 25/08/2008

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

To :
C.C.E.CHANDIGARH
PLOT NO 19, SECTOR 17-C, CHANDIGARH.
C.C.E.CHANDIGARH

Appellant
Vs
Respondent

M/S PATIALA PIPES PVT LTD

I am directed to transmit herewith a certified copy of Final order No. 1196 / 2008 –SM [BR] dated 7.8.2008

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 PATIALA PIPES PVT LTD

KAITHAL ROAD, PATIALA(PB)

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

A-5, BASEMENT LAJPAT NAGAR III,
NEW DELHI 110024.

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. 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


Assistant Registrar
(SM Appeal Branch)

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

Excise Appeal No.12/2007-SM (BR)

[Arising out of Order-in-Appeal No.957/CE/CHD/2006 dated 10.10.2006
passed by the Commissioner of Central Excise (Appeals), Chandigarh]

Date of Hearing/ Decision:7.8.2008

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?	:	
CCE, Chandigarh		...Appellants [Rep. by Shri S. Gautam, DR]

Vs.

M/s. Patiala Pipes Pvt. Ltd.

....Respondents
[Rep. by Ms. Asmita Nayak, Advocate]

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

final Order No. 1196/2008 SM (BR) Dated: 7.8.2008

Per P.K. Das:

After hearing both the sides and on perusal of the records, it is seen
that the Adjudicating Authority confirmed the demand of duty of

Rs.13,900/- and appropriated the said amount as already deposited by the Respondent. He also imposed penalty of equal amount under Rule 25 of the Central Excise Rules, 2002 read with Section 11 AC of the Central Excise Act, 1944. The Commissioner (Appeals) set aside the penalty as the Respondent deposited the duty before issue of show cause notice and followed the Larger Bench decision of the Tribunal in the case of CCE Vs. Machino Montell (P) Ltd. reported in 2004 (62) RLT 709.

2. Ld. DR submits that the Hon'ble Punjab & Haryana High Court over-ruled the decision of the Larger Bench.

3. Ld. Advocate cited the several decisions in support of the order of the Commissioner (Appeals).

4. I find that there is a factual dispute as to whether the Respondent removed the goods clandestinely. So, it is required to examine the facts of the case before setting aside the penalty. In view of that, the impugned order is set aside and the matter is remanded back to the Commissioner (Appeals) to decide afresh after considering the facts of the case. The appeal is allowed by way of remand.

Order dictated & pronounced in open court on 7.8.2008.

(P.K. Das)
Member (Judicial)

Ckp.