(17)

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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/3984 – 3985 / 2006 -SM[BR] Date 03/09/2008

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 KAPOOR PRINT PACK (P) LTD Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1232 – 1233 / 2008 -SM[BR] dated 3.7.2008 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 KAPOOR PRINT PACK (P) LTD
3. SHRI SUNIL KAPOOR, M.D.
G-13 & H-17, PANKI INDUSTRIAL AREA, SITE NO. 1, KANPUR
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. 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)

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

E/Appeal No.3984-3985/06-SM

(Arising out of order in appeal No.490/CE/Appl/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?

No

CCE, Kanpur — Appellant (Rep. by Shri B.S. Suhag, DR)

Vs

1. M/s Kapoor Print Pack Pvt Ltd — Respondent
2. Shri Sunil Kapoor, MD (Rep. by Shri Rajesh Chhibber, Advocate)

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

Date of Hearing: 3.7.08

Final Order No. 1232-33 /2008-SM(BR)

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 respondents are engaged in the manufacture of "Printed Laminated Rolls and Pouches" from raw material Polythene Rolls LD Film and Polyester Film. On 19.1.2004, the Central Excise officers visited the respondent's factory and verified the stock of raw materials and finished goods. The officers ascertained the shortage of raw material and finished goods during stock verification. The respondents deposited duty of Rs.77,946 and Rs. 28,721/- on finished goods and raw materials respectively vide P.L.A. entry dated 22.1.2004. Shri Sunil Kapoor, Managing Director of the Company, Respondent No.2 herein in his statement dated 19.1.2004 stated that he is unable to understand the reason for shortage. In another statement dated 24.5.2004, the respondent No.2 stated that they sold the finished goods to the customers at the factory gate without issuing any Central Excise invoice and did not account in the record. The Adjudicating Authority confirmed the demand of duty and appropriated the said amount as deposited by them. He refrained from imposition of penalty under Section 11AC and interest under Section 11AB of the Central Excise Act, 1944 and followed the larger Bench decision of the Tribunal in the case of Machino Montell (I) Ltd reported in 2004 (168) ELT 466 (Tri.-LB), the Revenue filed appeal before the Commissioner (Appeals) which was rejected. Hence the Revenue filed this appeal before the Tribunal.

3. After hearing both the sides and on perusal of the record, I find that the Respondent No.2 in his initial statement could not explain the reason for the shortage. However, in a subsequent statement dated 24.5.04, it is stated

that the finished goods were cleared without payment of duty. Thus, it is evident that the respondents cleared the finished goods clandestinely and the imposition of penalty under Section 11AC of the Act is warranted. However, the Respondent company already deposited the entire amount of duty before issue of show cause notice and therefore, in terms of proviso to Section 11AC of the Act, penalty is imposable to 25% of the duty. Hon'ble Punjab & Haryana High Court in the case of K.P. Pouches Vs Union of India and Another reported in 2008 (85) RLT 483 (Delhi) held that where entire duty is paid before issue of show cause notice Adjudicating Authority should specifically give option to the party to pay 25% of duty as penalty within 30 days. In the present case, lower authorities dropped the penal provision. So, I modify the impugned order and direct the respondent No.1 company to deposit penalty of 25% of duty (i.e. Rs.19,500/-) within 30 days from the date of receipt of this order.

4. Regarding imposition of penalty upon Respondent No.2 Managing Director of the company under Rule 26 of the Central Excise Rules, 2004, I find that the Respondent No.2 MD of the company could not explain the reasons for shortage during stock verification. Subsequently, the respondent No.2 disclosed the removal of finished goods without payment of duty. In view of the initial statement of respondent No.2, I do not find any reason to impose penalty on respondent No.2. So, penalty on Respondent No.2 is rightly dropped by the lower authorities.

5. In view of the above discussion, the impugned order is modified in so far as penalty of Rs.19,500/- is imposed on respondent No.1. The Respondent No.1 shall deposit the penalty within 30 days of receipt of this

order otherwise they are liable to pay penalty of equal amount of duty.

- The Appeal against respondent No.2 is rejected.

(Order dictated and pronounced in the open Court).

(P.K. Das)
Member(Judicial)

MPS*

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Website : www.cestat.gov.in

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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

Date : 18/05/2009

MISC Order No. 98 / 2009-SM[BR]

Application E/ ROM / 1 / 2009 –SM[BR]

Appeal E/3984 – 3985 / 2009 –SM[BR]

1. Appellant

   C.C.E.KANPUR

   117/7, SARVODAYA NAGAR, KANPUR.

2. Respondent

   M/S KAPOOR PRINT PACK (P) LTD

   G-13 & H-17, PANKI INDUSTRIAL AREA,
   SITE NO. 1, KANPUR

3. Adv / Consult :
   MR.RAJESH CHHIBBER

   FA/9, NEW KAVI NAGAR, GHAZIABAD

4. C.D.R
5. Bar Association, CESTAT, New Delhi.
6. Director Publications, Customs, Excise. I.P. Estate, New Delhi
7. M/s Centax Publications Pvt Ltd., 1512-B, Bhishm Pitamah Marg, Opp. ICICI Bank of Defence Colony, New Delhi - 110003
8. Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2 (OLD No.36),Vaithyaram Street, T. Nagar, Chennai 600017
9. Raghuraman's, 44 - B, Regal Flat,Shipra Suncity,Indirapuram,201010,Ghaziabad DT, U.P.
10. M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases, B-37, Sector -1, Noida - 201301 Gautam Budh Nagar, (U P)
11. Deeparchie Publications, M-93, Marg. 43, Saket, New Delhi - 110017.
12. Taxindiaonline.com Pvt.Ltd,B-XI/8183,Vasant Kunj,New Delhi -110070
13. Taxmann Allied Service Pvt. Ltd., 21/35, West Punjabi Bagh, New Delhi -110026
14. Easy Service Tax Online Dot Com Pvt. Ltd. 407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad - 15
15. LAWCRUX Advisors (P) Ltd, Law House,1-8,Sector - 10, Faridabad 121003 (Haryana)
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Assistant Registrar
(SM Branch)

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

Excise ROM Application No.01 of 2009-SM (BR)
In Excise Appeals Nos.3984 – 3985 of 2006-SM (BR)

CCE, Kanpur .....Appellant
[Rep. by Shri S. Gautam, DR]

Vs.

M/s. Kapoor Print Pack (P) Ltd. ...Respondent
[Rep. by Shri Rajesh Chhibber, Advocate]

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

Misc Order No. 98/09-SM(BR) /Dated:24.04.2009

Per P.K. Das:

Revenue filed this application for rectification of mistake in Final Order No.1232-33/2008-SM (BR) dated 3.7.2008.

2. For the proper appreciation of the case, the relevant facts of the case, in brief, are that the assessees are engaged in the manufacture of excisable goods. On 19.1.2004, the Central Excise Officers visited the respondent's factory and conducted stock verification. They ascertained shortage of finished goods and raw materials during stock verification. The assessees deposited the duty of Rs.77,946/- and Rs.28,721/- on finished goods and raw materials on 26.1.2004. The Managing Director admitted the shortage of the raw materials and finished goods. By statement dated 24.05.2004, the Managing Director of the Company stated that they sold the finished goods to the customers without issuing any central excise invoice and without payment of duty. Orginal Authority confirmed the demand of duty and appropriated the amount as deposited by them and refrained from imposition of penalty under Section

11 AC of the Act. Revenue filed appeal before Commissioner (Appeals), which was rejected. Thus, Revenue filed appeal before the Tribunal. Vide Final Order dated 3.7.2008, the Tribunal imposed the penalty under Section 11 AC of the Act, on the finished goods holding that the goods were cleared clandestinely. No penalty was imposed in respect of shortage of raw materials. There was no material available of clandestine removal of the goods.

3. In the instant application, it is contended by the Revenue that 25% of duty in respect of shortage of raw materials is imposable. It has also been contended that no finding was given in respect of setting aside of penalty on the shortage of raw materials.

4. On perusal of the Final Order of the Tribunal, I find that it was stated that the Managing Director admitted the removal of the finished goods without payment of duty and, therefore, penalty was imposed in respect of clandestine removal of finished goods. There is no materials available of clandestine removal of the raw materials. Hence, no penalty was imposed under Section 11 AC of the Act in respect of shortage of the raw materials. Therefore, I do not find any mistakes in the order of the Tribunal. Accordingly, the application filed by the Revenue is rejected.

Order dictated & pronounced in open court on 24.04.2009.

(P.K. Das)
Member (Technical)

Ckp.