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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/3772/2006-3773/2006-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 BALLS & CYLPEBS LTD(UNIT-II) Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1243 – 1244 / 2008 –SM[BR] dated 14.7.2008 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
(1-2) M/S BALLS & CYLPEBS LTD(UNIT-II)
SHRI R.K.AGARWAL DIRECTOR
A-29/2-I, BIJOLI INDL.AREA, BIJOLI, JHANSI.

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 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 Nos.3772-3773/2006 -SM

(Arising out of order in appeal No.426 & 427/CE/Appl/Knp/06 dated 31.8.2006 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 S. Gautam, DR)

Vs

1. M/s Balls & CylpebsLtd
2. Shri R.K. Agarwal, Director

Respondent
(Rep. by Shri H. Bajaj, Advocate)

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

Date of Hearing: 14.7.08

Final Order No. 1243 - 1244 /2008-SM(BR)

Per P.K. Das:

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

2. The Revenue filed these appeals against the order of Commissioner (Appeals) whereby penalty of Rs. 54,249/- under Section 11AC of the Central Excise Act, 1944 upon Respondent No.1 and penalty of Rs.10,000/- under Rule 26 of Central Excise Rules, 2002 upon the Director of Company, respondent No.2 herein, were set aside.

3. After hearing both the sides and on perusal of the record, it is seen that the respondents are engaged in the manufacture of Casting and Grinding Media of Iron and Steel. On 1.9.2004, the Central Excise officers verified the stock of raw materials and finished goods. The said officers ascertained the shortage of finished goods involving Central Excise duty of Rs.54,249/-. The Respondent No.2 accepted the shortage and deposited the duty immediately. The Adjudicating Authority confirmed the demand of duty and imposed equal amount of penalty under Section 11AC of the Act read with Rule 25 of the Rules and also imposed penalty upon Respondent No.2. The Commissioner (Appeals) set aside the penalties on the respondent.

4. The learned DR submits that the shortage was not properly explained and the goods were clandestinely removed and Section 11AC was properly invoked.

5. On perusal of the record, I do not find any material that the goods were clandestinely removed. In any event, shortage was detected during stock verification and the respondents paid the duty upon detection, which was appropriated by the Adjudicating Authority. There is no material for clandestine removal of goods and therefore, Section 11AC is not justified. The Hon'ble Punjab & Haryana High Court in the case of CCE, Chandigarh

Vs. Nachiketa Papers Ltd reported in 2007 (86) RLT 225 (P&H), has held that there is no evidence of clandestine removal or sale of goods and it is not a case of fraud, willful suppression or mis-statement of facts and penalty under Section 11AC of the Act on the shortage of goods is not justified. In the present case, the respondents deposited the duty upon detection of shortage by the Central Excise officers and thee is no material on record of clandestine removal of goods. So, I do not find any reason to interfere with the order of Commissioner (Appeals0. Accordingly, both the appeals are rejected.

(Order dictated and pronounced in the open Court).

(P.K. Das)
Member(Judicial)

MPS*