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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/240 /2007 – SM[BR] Date 25/11/2008

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

M/S P.K.PRODUCTS Respondent

I am directed to transmit herewith a certified copy of **Final order No** 1503 / 2008- **SM[BR]** dated 13.10.2008

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.K.PRODUCTS

123/372, FAZALGANJ, KANPUR.

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 - 3
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), Thyagarava Road, T. Nagar,Chennai
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-1
15 Office Copy
16 Guard file

Assistant Registrar

(SM Appeal Branch)

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

Appeal No.240 of 2007-SM (BR)

[Arising out of Order-in-Appeal No.531-CE/APPL/KNP/2006 dated 19.10.2006 passed by the Commissioner of Central Excise (Appeals), Kanpur]

Date of Hearing/ Decision:13.10.08

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, Kanpur ...Appellants
[Rep. by Shri A.K. Rastogi, DR]

Vs.

M/s. P.K. Products ...Respondent
[Rep. by Shri H. Bajaj, Advocate]

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

Final Order No. 1503/08-SM (BR)/Dated:13.10.2008

<u>Per P.K. Das</u>:

Revenue filed this appeal against the Order-in-Appeal No.531-CE/APPL/KNP/2006 dated 19.10.2006.

2. Ld. DR reiterates the Grounds of Appeal.

3. After hearing both the sides and on perusal of the records, it is seen that the central excise officers visited the Respondent factory on 22.01.2005 and detected the shortage of the finished goods. Shri Pravin Kumar Mishra, Partner of the Respondent firm in his statement admitted the shortage and could not explain the reasons for the shortage as he was out of station. The Respondent deposited the duty upon detection of the shortage. The Adjudicating Authority confirmed the demand of duty and appropriated the amount as deposited by them. The Revenue filed appeal before the Commissioner (Appeals) for imposition of penalty, which was rejected. Hence, Revenue filed this appeal.

4. I find that Shri Pravind Kumar Mishra, Partner of the Respondent Firm admitted the shortage and deposited the duty upon detection. There is no materials of clandestine removal of the goods. The Hon'ble Punjab & Haryana High Court in the case of Commissioner of Central Excise Vs. Omkar Steel Tubes (P) Ltd. – 2008 (221) ELT 200 (P&H) held that mere fact that duty has been paid before issuance of the show cause notice would not result into inapplication of Section 11 AC and the penalty could still be imposed as long as various elements envisaged by Section 11 AC are satisfied including presence of mens rea. In the present case, I do not find any material for the clandestine removal of the goods. The shortage was detected during the stock verification and the Respondent paid the duty. Thus, the penalty under Section 11 AC of the Central

Excise Act is not warranted. So, I do not find any reason to interfere the order of the Commissioner (Appeals). The appeal filed by the Revenue is rejected.

Order dictated & pronounced in open court on 13.10.2008.

(P.K. Das)
Member (Judicial)

Ckp.