

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/215 /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.

C.C.E.KANPUR

Appellant

Vs
Respondent

M/S KUMAR ROTOFLEX P LTD

I am directed to transmit herewith a certified copy of Final order No. 1514 / 2008- SM[BR] dated 6.10.2008
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 KUMAR ROTOFLEX P LTD

15 E, PANKI INDUSTRIAL AREA, SITE-I, KANPUR.

2. Adv. / Consult SHRI I.K. JAIN, M.D.

M/S RESPONDENT;-----

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 - 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

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Assistant Registrar
(SM Appeal Branch)

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

E/Appeal No.215/2007 -SM

(Arising out of order in appeal No.569/CE/App/KNP/06 dated 16.11.2006
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?

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CCE, Kanpur

Appellant
(Rep. by Shri R.K. Verma, DR)

Vs

M/s Kumar Rotoflex (P) Ltd

Respondent
(Rep. by Shri I.K. Jain, M.D.)

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

Date of Hearing: 6.10.08

Final Order No. 1514 /2008-SM(BR)

Per P.K. Das:

After hearing both the sides and on perusal of the record, it is seen that the Central Excise officers visited the respondents factory and conducted stock verification. The said officers detected shortage of raw

materials and finished goods involving Central Excise duty of Rs.31,353/-. Shri A.K. Shukla, Authorised Signatory could not explain the reasons for the shortage. He accepted the shortage and voluntarily debited the duty before issue of show cause notice. The Adjudicating Authority confirmed the demand of duty and appropriated the amount as deposited by the respondents. He refrained from imposition of penalty under Section 11AC of Central Excise Act, 1944. Revenue filed appeal before the Commissioner (Appeals) which was rejected. Hence the Revenue filed this appeal.

2. On perusal of the record, I find that shortage was detected during stock verification. The respondents deposited the duty upon detection of shortage. There is no material available for clandestine removal of goods. So, the penalty under Section 11AC of the Central Excise Act, 1944 is not warranted. The Hon'ble Punjab & Haryana High Court in the case of CCE, Ludhiana Vs Omkar Steel Tubes Pvt Ltd reported in 2008 (221) ELT 200 (P&H) held that penalty could be imposable as long as various elements envisaged by Section 11AC are satisfied including the presence of mens-rea and the appeal filed by the Revenue was dismissed..

3. In view of that, I do not find any reason to interfere with the order of the Commissioner (Appeals). Accordingly, the appeal filed by the Revenue is rejected.

(Order dictated and pronounced in the open Court).

MPS*

(P.K. Das)
Member(Judicial)