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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/3941/2006 – SM[BR]   Date 26/11/2008

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 TECHNOPHARM (P) LTD.   Respondent

I am directed to transmit herewith a certified copy of **Final order No 1524 / 2008-.SM[BR]** dated **14.11.2008**

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 TECHNOPHARM (P) LTD.
E -16, PANKI INDUSTRIAL AREA, SITE - I, 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). Thyagaraya 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)

CUSTOMS EXCISE & SERVICE TAX APPELLATETRIBUNAL,
West Block No.2, R.K Puram, New Delhi-110066

COURT-IV

Date of hearing: 14.11.2008

E/Appeal No.3941/2006-SM(BR)

(Arising out of Order-in-Appeal No. 498/CE/Appl/KNP/06 dated 13.10.2006 passed by the Commissioner (Appeals), Customs & Central Excise, Kanpur)

For approval and signature:

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

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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?

Y SM

CCE Kanpur — Appellant (Rep. Shri S.K. Panda, DR)

Vs.

M/s Technopharam (P) Ltd — Respondent (Rep. Shri Hemant Bajaj, Advocate)

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

Final Order No. 1524/08-SM(BR)

Per: P.K. Das

The relevant facts of this case in brief, are that the Central Excise Officers visited the Respondent factory on 14.8.2004 and conducted stock verification. The Central Excise Officers detected shortage of finished goods and raw materials involving Central Excise duty of Rs. 37,435.00 which was debited by the Respondent immediately. Adjudicating Authority confirmed the demand of duty and appropriated the amount as deposited by them. He ~~repaired~~ refrained from imposition of penalty under Section 11 AC of Central Excise Act, 1944. Revenue filed appeal before the Commissioner (Appeals), which was rejected. So the Revenue filed the appeal before the Tribunal.

2. After hearing both the sides and on perusal of the records, it is seen that representative of the Respondent in his statement stated that due to mistake and irregularity committed by their staff the shortage have been occurred in the finished goods and in the raw materials and accepted the shortages and voluntarily debited the duty. On perusal of the records, that there is no material available for clandestine removal of the goods. The Adjudicating Authority observed that the Respondent was not guilty of conducted contumacious act merely because they fail to perform a statutory obligation of making entries of records. The Hon'ble Punjab & Haryana High Court in the case of Commissioner of

Central Excise, Ludhiana Vs. Omkar Steel Tubes (P) Ltd. 2008 (221) ELT 200 (P&H) held that mere fact that duty has been paid before issuance of show cause notice would not result into in application of Section 11 AC and penalty could still be imposed as long as various elements envisaged by Section 11 AC are satisfied including presence of meansrea. In the present case, from statement of the representative of the Respondent can not conclude that the Respondent clandestinely removed goods. So both the authority below had correctly refrained from imposition of penalty. Accordingly, the appeal filed by the Revenue is rejected.

(Dictated and pronounced in the open court).

(P.K. Das)
Member (Judicial)

K. Gupta