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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/124 /2007 – SM [BR] WITH CROSS / 70 /2007 Date 28/11/2008

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
C.C.E. LUCKNOW
7-ASHOK MARG, LUCKNOW

C.C.E. LUCKNOW Appellant
Vs
M/S BAIJNATH HARI SHANKAR NAG (P) LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1547 / 2008- **SM[BR]** dated **24.9.2008**

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 BAIJNATH HARI SHANKAR NAG (P) LTD.
MANSOOR NAGAR, LUCKNOW.

2. Adv. / Consult

NONE;---------------

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)

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

Appeal No.124 of 2007-SM (BR)
With Cross 70 of 2007

[Arising out of Order-in-Appeal No.349-CE/05 dated 28.06.2005 passed by the Commissioner of Central Excise (Appeals), Lucknow]

Date of Hearing/ Decision:24.09.08

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.		No.
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?	:	Yes.

CCE, Lucknow ...Appellants
[Rep. by Shri Sansar Chand, DR]

Vs.

M/s. Baij Nath Hari Shankar Nag (P) Ltd. ...Respondent
[Rep. by None.]

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

Final Order No. 1547/08-SM(BR)/Dated:24.09.2008

Per P.K. Das:

Revenue filed this appeal against the order of the Commissioner (Appeals), whereby penalty was reduced from Rs.1,42,301/- to Rs10,000/-.

2. After hearing the ld. DR and on perusal of the records, it is seen that the central excise officers visited the Respondent's factory on 13.09.2002 and detected shortage of finished goods. Shri Harpal Singh, Manager and Authorised Signatory of the Respondent accepted the shortage but could not explain the reasons for shortage. They paid duty on 24.09.2002. The Adjudicating Authority confirmed the demand of duty and appropriated the amount as deposited by them. He also imposed a penalty of equal amount under Rule 25 of the Central Excise Rules, 2002 read with Section 11 AC of the Central Excise Act, 1944. The Commissioner of Central Excise (Appeals) reduced the penalty to Rs.10,000/-

3. On perusal of the records, I do not find any material that the goods were cleared clandestinely. No doubt, the Respondent failed to give any explanation for the shortage. It is not ipso facto that the goods were cleared clandestinely. The shortage may be ascertained for various reasons. In any event, the Respondent did not dispute the shortage and paid the duty. It does not mean that the goods were clandestinely removed. The contention of the ld. DR that the demand of duty acknowledged by the Respondent would establish that the goods were clandestinely removed. I do not find any force in the submission of the ld. DR. It is well settled law to impose penalty under Section 11 AC of the Act, it has To be established clandestine removal of the goods. In the present case, as already stated, no material is available to impose penalty under Section

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

dictated & pronounced in open court on 24.09.2008.

(P.K. Das)
Member (Judicial)

Ckp.