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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/331 - 332 / 2007 –SM[BR] Date 05/12/2008

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 SYNDICATE FOOD PRODUCTS Respondent

I am directed to transmit herewith a certified copy of **Final order No. 1587- 1588 / 2008 SM[BR]** dated 6.9.2008 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent

1. M/S SYNDICATE FOOD PRODUCTS
2. SH MANOJ KUMAR SRIVASTAVA

B-11-12, INDUSTRIAL AREA, SITE NO 1, PANKI , KANPUR.

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,
R.K. PURAM, W.B. NO.2, PRINCIPAL BENCH
NEW DELHI, COURT NO.I

Excise Appeals Nos. 331 -332 of 2007-SM (Br)
[Arising out of Order-in-Appeal No. 565-CE/APPL/KNP/2006 dated 15.11.2006 passed by the Commissioner (Appeals), Customs & Central Excise, Kanpur]

Date of Hearing/Decision : 09.09.2008

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.	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?	

CCE, Kanpur — Appellant

Vs.

(i) M/s Syndicate Foods Products — Respondents
(ii) Shri Manoj Kumar Srivastava

Appearance:
Mr. S.K. Panda, Joint CDR for the Appellant
None for the Respondent

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

Final **Order No.** 1587-1588/2008 SM(BR)

Per P.K. Das:

Heard the learned Joint CDR on behalf of the Revenue. None appeared on behalf of the Respondent.

2. After hearing the learned Joint CDR and on perusal of the records, it is seen that on 3.3.2005, the Central Excise Officers visited the Respondent's factory and conducted stock verification of finished goods. The said officers ascertained shortage of finished goods involving central excise duty of Rs. 1,85,040/- which was deposited immediately upon detection. The Adjudicating Authority

confirmed the demand of duty and appropriated the said amount as deposited by them and refrained from imposition of penalty. Revenue filed appeal before the Commissioner (Appeals), which was rejected. Hence, Revenue filed this appeal. It is seen from the order of the Adjudicating Authority that Manoj Kumar, Authorised Signatory in his statement dated 3.9.2005 admitted the shortage of the finished goods but could not explain the reasons for the said shortage.

3. Learned Joint CDR relied upon the decision of the Hon'ble Punjab & Haryana High Court in the case of CCE, Ludhiana vs. Onkar Steel Tubes (P) Ltd., reported in 2008 (221) ELT 200 (P&H). He submits that the Respondent failed to explain the reasons for the shortage, which amounts to the clandestine removal of the goods. I am unable to agree with the submission of the learned Joint CDR. The Hon'ble Punjab & Haryana High Court in the case of CCE, Ludhiana vs. Onkar Steel Tubes (P) Ltd., (supra) observed that deposit of payment of duty before issue of the show cause notice would not result into inapplication of Section 11AC and penalty would be imposed so long as various elements envisaged by Section 11AC are satisfied including presence of mens-rea.

4. On perusal of the records, I do not find any material that the Respondent cleared the goods clandestinely. It is seen that the shortage was detected during the stock verification and the Authorised Signatory could not explain the reasons on the spot and paid the duty. The Revenue could not produce any material that the goods were cleared clandestinely. Therefore, in the facts and circumstances of the case, penalty under Section 11AC of the Act is not warranted. So, I do not find any reason to interfere the order of the Commissioner (Appeals). Accordingly, the appeals filed by the Revenue are rejected.

[Dictated and pronounced in the open Court]

[P.K. Das]
Member (Judicial)

Ckp