

**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/3320/2006-SM[BR]

Date 06/05/2008

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

To :  
C.C.E. JALLANDHAR(HQ. AT CHANDIGARH)  
C.R.BUILDING, PLOT NO. 19, SECTOR 17-C,  
CHANDIGARH.  
C.C.E. JALLANDHAR(HQ. AT CHANDIGARH)

Appellant

Vs

Respondent

M/S JMP INDUSTRIES.

I am directed to transmit herewith a certified copy of Final order No. 700 /2008 -SM[BR] dated 20.3.2008

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 JMP INDUSTRIES.

A-5, FOCAL POINT, JALANDHAR.

2. Adv. / Consult

MR.SUDHIR MALHOTRA.

13-R, HUKAM CHAND COLONY, NEAR D.A.V COLLEGE, JALANDHAR

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 Delhi -

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 60017

13. Taxindiaonline.com Pvt.Ltd, B-XI/8183, Vasant Kunj, New Delhi - 110070

14. Office Copy

15. Guard file

  
Assistant Registrar  
(SM Appeal Branch)

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

E/Appeal No.3320 /2006-SM

(Arising out of order in appeal No.213/CE /Jal/06 dated 29.6.06 passed by the Commissioner of Central Excise (Appeals), Jalandhar)

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?

CCE Jalandhar

Appellant  
(Rep. by Shri Rajmal, Advocate)

Vs

M/s J.M.P Industries

Respondent  
(Rep. by Shri Sudhir Malhotra, Advocate)

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

Date of Hearing: 20.3.2008

Final Order No. 70 /2008-SM(BR)

Per P.K. Das:

The Revenue filed this appeal against the order of the Commissioner (Appeals) whereby penalty was reduced to Rs.10,000/- from the mandatory

○ penalty of Rs. 1,37,440/- under Section 11AC of the Central Excise Act, 1944.

2. After hearing both the sides and on perusal of record, I find that the Adjudicating Authority confirmed the demand of duty and imposed penalty of equal amount. The Commissioner (Appeals) upheld the demand of duty and observed that the extended period of limitation under the proviso to Section 11A(i) of the Central Excise Act, 1944 would be applicable. However, Commissioner (Appeals) reduced the penalty to Rs.10,000/- as respondents deposited the duty with interest before the issue of show cause notice.

3. I find that when the Commissioner (Appeals) observed that extended period of limitation would be invoked as there is suppression of fact with intent to evade payment of duty, Section 11AC of the Act shall be applicable. The Hon'ble Delhi High Court in the case of CCE Vs Malbro Appliances Pvt Ltd reported in 2007 (208) ELT 503 (Del) held that penalty equal to duty amount is not imposable when duty paid before issue of show cause notice. It has been observed that first proviso to Section 11AC of the Act providing for penalty of 25% of duty, if duty demanded paid within 30 days of passing of such order, would be applicable. Similar view was also taken by the Hon'ble Rajasthan High Court in the case of Union of India Vs. T.P.L. Industries Ltd reported in 2007 (214) ELT 506 (Raj).

4. In the present case, the respondents paid the duty before issue of show caue notice. Therefore, penalty under Section 11AC of the Act is imposable 25% of the duty, which comes to Rs. 34,360/-. Accordingly, the impuged

order is modified and penalty enhanced to Rs. 34,360/- from Rs.10,000/-. The appeal is disposed of in the above terms.

(Order dictated and pronounced in the open Court).'

MPS\*

(P.K. Dās)  
Member(Judicial)