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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/1388/2007 -SM[BR] Date 19/01/2009

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

To :
M/S SUPER SIGN CABLE INDUSTRIES LTD.
KHASRA NO. 106, PLOT NO. 339, VILLAGE KHERA
KALAN, DELHI.

M/S SUPER SIGN CABLE INDUSTRIES LTD. Appellant
Vs
C.C.E. DELHI I Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 74 / 2009 - **SM[BR]** dated 9.1.2009 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
C.C.E. DELHI I
C.R. BUILDING, I.P. ESTATE, NEW DELHI 110002
2. Adv. / Consult
MR.K.KUMAR
15-B, DDA(MIG)FLAT, RAJOURI GARDEN, N DELHI.
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 & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. IV
Excise Appeal No. 1388 of 2007 (SM)

[Arising out of the Order-in-Appeal No. 113/CE/DLH/2006 dated 11/01/2007 passed by The Commissioner (Appeals), Central Excise, Delhi – I.]

For Approval and signature :
Hon'ble Shri Rakesh Kumar, Member (Technical)

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 would 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 Department Authorities?	:

M/s Super Sign Cable Industries — Appellant

Versus

CCE, Delhi – I — Respondent

Appearance

Shri K. Kumar, Advocate – for the appellant.

Shri M.M. Singh, Authorized Representative (DR) – for the Respondent.

CORAM : **Hon'ble Shri Rakesh Kumar, Member (Technical)**

DATE OF HEARING : 09/01/2009.

find Order No. 74/09-SM(BR) Dated : 9-1-09

Per. Rakesh Kumar :-

Shri K. Kumar, Advocate, the learned Counsel for the Appellant submits that the dispute in this case is with regard to valuation of the goods removed without payment of duty. He submits that the valuation is incorrect on two counts – firstly, the value adopted in respect of some items on the basis of the information given by the godown keeper was on much higher side, as compared to their actual value, as informed by Shri Sanjay Garg, Proprietor of the Appellant firm and secondly, the price of the goods was to be treated as cum-duty price and duty is to be calculated after removing the element of duty. He submits that while the Assistant Commissioner in the order-in-original dated 30/11/05 has accepted by the both the contentions but still, while quantifying the duty, the first contention that the price adopted in respect of certain items based on the information given by the godown keeper is on much higher side, has not been taken into account. He says that, if both the contentions accepted by the Assistant Commissioner are taken into account while calculating the duty liability, the same would have been Rs. 2,87,402/- as against the duty demand of Rs. 3,78,000/- confirmed by the

Assistant Commissioner. He pleaded that in the appeal before the Commissioner (Appeal) this mistake was pointed out, but the Commissioner (Appeal) has not considered the same and upheld the Assistant Commissioner's order. He stated that the entire amount as per his calculation i.e. Rs. 2,87,402/- was deposited even prior to the adjudication of this matter. He also pleaded that since the entire amount has already been deposited, prior to adjudication of this matter, penalty equal to the 25% of the duty demand should have been imposed.

1.2 The learned Departmental Representative while accepting both the points raised by the counsel for the Appellant has not conceded quantifying the duty based on the same and that he has no objection that the matter for re-quantifying of the duty.

2. I have carefully considered the submissions from both the sides. On going through the Assistant Commissioner's order, I find that he himself in order-in-original given the following finding :-

"As Shri Sanjay Garg, Proprietor of the firm in his statement dated 31.05.2005 has given the prices of various types of cables and explained the reason for the same, being what it should be, I find weight in the reply submitted through Shri K. Kumar, Advocate. The earlier valuation was arrived at through the price given by the godown keeper at the time of search of the godown premises.

I also agree to the submission that the price is to be as cum duty. There is nothing in the Show Cause Notice to support that this point has been taken care of."

However, the calculation of differential duty does not show that the prices, as mentioned, by Shri Sanjay Garg, Proprietor of the firm have been adopted. In view of this, I hold that this is a fit case for being remanded to the Assistant Commissioner for re-quantification of duty. While re-quantifying the duty, the Assistant Commissioner is also directed to consider the Appellant's plea that they are eligible for penalty of equal to 25% of the duty demand, as per the provisions of Section 11AC.

(Dictated and pronounced in open court)

(Rakesh Kumar)
Member (Technical)

PK