TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD

Email : delhi@cestat.gov.in

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/1596/2007 – SM[BR] Date 05/02/2009

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

To :
M/S RAVI CABLE INDUSTRIES
308/12,SHAHZADA BAGH, INDUSTRIAL AREA

M/S RAVI CABLE INDUSTRIES Appellant
Vs
C.C.E. DELHI I Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 102 / 2009 - **SM[BR]** dated 16.1.2009 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.BHASIN SETHI & ASSICIATE
   401,SATYAM CINEMA BUILDING,RANJEET NAGAR,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)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
BENCH-SM

E/1596/2007-SM

[Arising out of Order-in Appeal No.21-22/CE/DLH/2007 dated 09.03.2007 of Commissioner Central Excise (Appeals), Delhi-I]

Date of Hearing: 16.01.2009

For approval and signature:

Hon'ble Mr. 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 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?	

M/s. Ravi Cables Industries ...Appellant
[Represented by Shri V.R. Sethi, Advocate]

Vs.

CCE, Delhi ... Respondent
[Represented by Shri R.K. Saini, DR]

Coram: Hon'ble Mr. RAKESH KUMAR, MEMBER (TECHNICAL)

Final ORDER NO. 102/09-SM(DB) DATED:16.01.2009

PER: RAKESH KUMAR

The appellant's factory was visited by the Central Excise Officers on 8.11.04 and at that time in the course of verification of the stock of the finished goods, finished goods valued at Rs.18,88,151/- were found short vis-à-vis the balance of finished goods as recorded in the RG-I register. The duty involved on these goods was Rs.3,08,147/-, a part of which was debited in the RG-23 A part 2 account on the same day and balance was paid on 29.11.04. The statement of Shri Lalit Saini, Partner of the appellant Company was first recorded on 8th November 2004 and subsequently on 9.5.05 and on both the occasions he said that being busy with the marriage of his son he is not in a position to explain the shortage and it will be explained subsequently. Subsequently when enquiry was made on 18.8.05, he stated that the goods made have been removed without payment of duty. It is on this basis that proceedings for confirmation of the duty demand which had earlier been paid by them and imposition of penalty under section 11AC on the appellant firm and penalty under rule 26 of the Central Excise Rules on Shri Lalit Saini, Partner of the company were initiated. The Asstt. Commissioner vide order in original dated 30.01.2006 confirmed the duty demand of Rs.3,08,147/- and besides this, imposed penalty of Rs.3,08,147/- on the appellant firm under section 11AC and penalty of Rs.75,000/- on Shri Lalit Saini under Rule 26. On appeal the Commissioner (Appeals) while upholding the duty demand and penalty under section 11 AC set aside the penalty of Shri Lalit Saini. The present appeal has been filed against the impugned order challenged the imposition of penalty on the appellant company under section 11AC.

2. Shri V.R.Sethi, Advocate, ld. Counsel on behalf of the appellant, pleaded that in this case entire duty on the goods found short has been paid in November, 2004, that is, much before the issue of show cause notice dated 30th September, 2005 and in view of this as per the provisions of the proviso to section 11AC the penalty would be only 25% of the duty and not equal to the duty. In this regard he placed reliance on the decision of Hon'ble Delhi High Court in the case of K.P.Pouches (P) Ltd. Vs. UOI & Anr. reported in 2008 (85) RLT 483 (Del.) and also Hon'ble Delhi High Court's judgement in the case of CCE vs. Malbro Appliances P. Ltd. reported in 2007 (79) RLT 109 (Del.).

3. Shri R.K. Saini, ld. DR defended the impugned order reiterating the Commissioner (Appeals)'s findings.

4. I have carefully considered the submissions from both the sides. The appellant do not dispute the shortage of the finished goods detected at the time of officer's visit to the unit and they have paid the entire duty involved on the goods found short in November 2004 itself. Their plea is that since the entire duty had been paid prior to the issue of show cause notice the penalty under section 11AC could be confined to only 25% of the duty amount as per the proviso

when
to section 11AC. I find that since the duty ~~upon~~ demand was confirmed by the Asstt. Commissioner was in respect of the shortage of finished goods and the same had been paid in full prior to the issue of show cause notice, the appellant are covered by the provisions of proviso to section 11AC and therefore the penalty would be only for 25% of the duty amount. I find that the same view has been taken by Hon'ble Delhi High Court in the case of K.Pouches (P) Ltd. vs. UOI & Anr. (supra). The penalty u/s.11AC is therefore reduced to 25% of the duty demand and the impugned order stands modified accordingly. Appeal is disposed off as above.

[Pronounced in the open court during the course of hearing]

(RAKESH KUMAR)
MEMBER (TECHNICAL)

anita