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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Appeal No. E/4871/2004 - EX[DB] Date 13/02/2009

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

To :
M/S K.P. POUCHES PVT. LTD.
46, RAMA ROAD, NEW DELHI, (THROUGH SHRI R.P. TRIPATHI, DIRECTOR)

M/S K.P. POUCHES PVT. LTD. Appellant

Vs

C.C.E. DELHI-I Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 118/2009- **EX[DB]** dated 04-2-09

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
C.C.E. DELHI-I
C.R. BUILDING, I.P. ESTATE, NEW DELHI
110002
2. Adv. / Consult
MR.J.S.SINHA
4-E, 4TH FLOOR, WORLD TRADE TOWER BARAKHAMBA LANE, NEW DELHI-1
3 C.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-15
15 Office Copy
16 Guard file

Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI

COURT – III

CENTRAL EXCISE APPEAL NO. 4871 OF 2004

[Arising out of Order-in-Appeal No. 111-112/CE/DLH/2004 dated 25.06.2004 passed by the Commissioner of Central Excise (Appeals), New Delhi]

For approval and signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)
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 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 Departmental authorities?	Yes

M/s. K.P. Pouches Pvt. Ltd., Appellant

Vs.

CCE, Delhi-I Respondent

Appearance:

Shri J.S. Sinha, Advocate for the appellant,
Shri A.K. Rastogi, Departmental Representative, for the Revenue,

Coram:

Hon'ble Mr. M. Veeraiyan, Member (Technical);
Hon'ble Mr. P.K. Das, Member (Judicial),

Date of hearing/decision: 4th February, 2009

FINAL ORDER NO. 118/09-EX **dated** ________

Per P.K. DAS:

The appellant filed this appeal against Order-in-Appeal No. 111-112/CE/DLH/2004 dated 25th June, 2004 ~~agitating~~ against the imposition of penalty under Section 11AC of the Central Excise Act, 1944.

2. Learned Advocate submits that the original authority confirmed the demand of duty of Rs. 11,40,233/- and imposed penalty of equal amount under Section 11AC of the said Act. The appellant had already deposited a sum of Rs. 10 lakhs before the issuance of show cause notice. He, further, submits that on appeal the Commissioner (Appeals) modified the order and reduced the demand of duty amount to Rs. 3,15,945/- and also reduced the penalty of equal amount of duty under Section 11AC of the Act. He submits that since the appellant deposited the duty before issuance of show cause notice, therefore, penalty should not be more than 25% of duty under Section 11AC of the Act. In support of his argument, he relied upon the decision of the Hon'ble Delhi High Court in the appellant's own case, reported in 2008 (228) ELT 31 (Del.)

3. Heard learned D.R. who reiterates the finding of the Commissioner (Appeals).

4. After hearing both sides and on perusal of the records, we find force in the submissions of the learned Advocate. Hon'ble Delhi High Court in appellant's own case cited supra has held that if the assessee

deposited the entire duty amount well before the issuance of the show cause notice, he is liable to pay only 25% of duty amount as penalty under Section 11AC of the Act. In the present case we find that the appellant deposited the entire amount of duty before issuance of the show cause notice. Therefore, penalty is reduced to 25% of the duty amount i.e. Rs. 78,987/-. Accordingly, appeal is disposed of in above terms.

(Dictated & pronounced in the Open Court.)

(M. VEERAIYAN)
MEMBER (TECHNICAL)

(P.K. DAS)
MEMBER (JUDICIAL)

RK