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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/1818/2007 – SM[BR] Date 19/05/2009

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

To :
C.C.E. KANPUR

117/7, SARVODAYA NAGAR, KANPUR 208005.

C.C.E. KANPUR Appellant

Vs

M/S INDL. ENTERPRISES Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 405 / 2009 –SM[BR] dated 28.4.2009

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 INDL. ENTERPRISES

83/258-A, JUHI, KANPUR

2. Adv. / Consult

NONE;--------------------

3 S.D.R
4 ~~J.C.D.R.~~
5 Bar association, CESTAT, New Delhi
6 Director Publications, Customs, Excise. I.P. Estate, New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT. U.P.
10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11 M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
12 Taxindiaonline.com Pvt.Ltd. B-XI/8183,Vasant Kunj, New Delhi - 110070
13 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
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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. 1818 of 2007 (SM)

[Arising out of the Order-in-Appeal No. 124-CE/APPL/KNP/ 2007 dated 28/03/2007 passed by The Commissioner (Appeals), Customs & Central Excise, Kanpur.]

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?	:

CCE, Kanpur — Appellant

Versus

M/s Industrial Enterprises — Respondent

Appearance

Shri S. Gautam, Authorized Representative (DR) – for the appellant.

None – for the respondent.

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

DATE OF HEARING : 28/04/2009.

Final Order No. 405/09-SM(DR) Dated : 28.4.09

Per. Rakesh Kumar :-

This is an appeal by the Revenue against order-in-appeal No. 124-CE/APPL/KNP/99 dated 28/03/07 passed by CCE (Appeals), Kanpur, by which the Commissioner (Appeals), while upholding the duty demand against the Respondent set aside the imposition of penalty on them under Section 11AC. The Respondent is manufacturer of Aluminium Pipes. In the course of inquiry made by the Jurisdictional Central Excise Officers against the Respondent, it was found that they had removed clandestinely 520 pieces of Aluminium Pipes without payment of duty. The Respondent had paid the duty prior to the issue of show cause notice. A show cause notice dated 16/6/06 was issued to them for confirming the duty demand, appropriation of the amount towards the duty and imposition of penalty on them under Section 11AC. The Deputy Commissioner, vide order-in-original dated 30/09/06 besides confirming the duty demand alongwith interest, imposed penalty equal to the duty evaded under Section 11AC on the Appellant. On appeal against the Deputy Commissioner's order, the Commissioner (Appeals) while upholding the duty demand alongwith interest, set aside the imposition of penalty on them under Section 11AC on the ground that the entire duty alongwith interest had been paid prior to the issue of show cause notice. The Commissioner (Appeals) in this regard relied upon the Tribunal judgments in the case of

(a) Tribunal's judgment in the case of Machino Montell (I) Ltd. – 2004 (168) E.L.T. 466 (Tri. – LB),

(b) Tribunal's judgment in the case of Rashtriya Ispat Nigam Ltd. vs. CCE – 2003 (116) E.L.T. 285 (T), the Government SLP which has been dismissed by the Hon'ble Supreme Court vide judgment reported in 2004 (163) E.L.T. A58 (S.C.) and

(c) Tribunal's judgment in the case of Gaurav Mercantile Ltd. – 2005 (190) E.L.T. 11 (Bom.).

The Revenue in this appeal against the Commissioner (Appeals)'s order has challenged the setting aside of the penalty imposed on the Appellant under Section 11AC.

2. None appeared for the Respondent. Heard the learned Departmental Representative who pleaded that the judgments of the Tribunal in the case of Machino Montell (I) Limited (supra) and other judgments relied upon are no longer a good law as the Tribunal's judgment in the case of Machino Montell (I) Ltd. has been reversed by Hon'ble Punjab & Haryana High Court vide judgment reported in 2006 (4) S.T.R. 177 (P&H). He also pleaded that there is clear finding in the Assistant Commissioner's order that the Respondent had clandestinely removed 520 pieces of Aluminium Pipes without payment of duty, and in view of this, the provisions of Section 11AC warranting imposition of Section 11AC was attracted.

3. I have carefully considered the submissions from Departmental Representative and perused the records. I find that there is a clear finding of the Deputy Commissioner that the Respondent had removed 520 pieces of Aluminium Pipes without payment of duty and this finding has been upheld by the Commissioner (Appeals). The only ground on which the Commissioner (Appeals) has set aside the penalty is that the

Appellant had paid the entire duty alongwith interest prior to the issue of show cause notice, which in view of the Hon'ble Punjab and Haryana High Court's judgment in the case of Machino Montell (I) Limited (supra) is no longer a valid ground. In view of this, I hold that the Commissioner (Appeals)'s order setting aside the penalty is not correct and accordingly the same is set aside. The penalty imposed on the Respondent by the Deputy Commissioner's order is restored. The impugned order stands modified as above. The Revenue's appeal is allowed.

(Dictated and pronounced in open court.)

(Rakesh Kumar)
Member (Technical)

PK