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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/401 /2007 – SM[BR] Date 20/05/2009

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

SH MRIDULENDRA SINGH AUTHORIZED SIGNATORY Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 419 / 2009 –SM[BR] dated 27.4.2009 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
   SH MRIDULENDRA SINGH AUTHORIZED SIGNATORY
   M/S KANPUR EDIBLES PVT. LTD. RANIA, KANPUR (DEHAT)
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-110066.
Principal Bench, New Delhi.

E/401/07-SM

[Arising out of Order-in-Appeal No.610-CE/APPL/KNP/2006 dt.30.11.06 passed by the Commissioner(Appeals), Kanpur)

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 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

Shri Mridulendra Singh Respondent

Appearance

Sh. S.Gautam, Authorised Departmental Representative, DR for Appellant
None for Respondent

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

Date of decision: 27.4.09
Final Order No. 419/08-SM(BR)

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Per Rakesh Kumar:

This is Revenue's appeal against impugned order-in-appeal No.610-CE/APPL./KNP/2006 dt.30.11.06 passed by Commissioner(Appeals), Kanpur by which the Commissioner(Appeals) dismissed the Deptt.'s review appeal seeking enhancement of the penalty imposed on the respondent from

Rs.2500/- to Rs.10,000/-. The Dy. Commissioner vide order-in-original dt.29.10.05 had imposed penalty of Rs.25,00 /- on Shri Mridulendra Singh, authorized signatory of M/s. Kanpur Edibles(P) Ltd. under Rule 26 of Central Excise Rules,2002, Besides confirming duty demand of Rs.1,50,887/- alongwith interest against M/s. Kanpur Edibles(P) Ltd. under proviso to Section 11A(2) of Central Excise Act,1944 and imposing penalty of Rs.10,000/- on M/s. Kanpur Edibles(P) Ltd. under Rule 25 of Central Excise Rules,2002. The Department reviewed the Dy. Commissioner's order-in-original and filed a review appeal before the Commissioner(Appeals) for enhancement of the penalty under Rule 26 of Central Excise Rules,2002 on Shri Mridulendra Singh from Rs.2500/- to Rs.10,000/- on the ground that the minimum penalty prescribed under Rule 26 of Central Excise Rules,02 is Rs.10,000/- and a penalty below this amount of penalty imposed. The Commissioner(Appeals) vide impugned order has dismissed the review appeal against the present appeal has been filed.

2. None appeared for the respondent.

2.1 Heard Ld. DR who reiterating the grounds of appeal pleaded that the minimum penalty imposable under Rule 26 of Central Excise Rules,2002 is Rs.10,000/- and hence the penalty imposed on the respondent may be enhanced to Rs.10,000/-.

3. I have carefully considered the submissions of Ld. DR and perused the records. The only point of dispute in this case is the quantum of penalty on the respondent under Rule 26 of the Central Excise Rules,2002. As per the provisions of Rule 26 of Central Excise Rules, any person who acquires possession of, or is in any way concerned in transporting, removing, depositing, keeping, concealing, selling or purchasing, or in any other

manner deals with, any excisable goods which he knows or has reason to belief are liable to confiscation under the Act or these rules, shall be liable to "a penalty not exceeding the duty on such goods or rupees ten thousand, whichever is greater". The Deptt's contention would have been correct if instead of the words "penalty not exceeding" the words "penalty equal to" had been used. The way Rule 26 and Rule 25(1) are worded, they prescribe
the duty involved is less than Rs.10000/-
an upper limit of penalty – if the upper limit of penalty would be Rs.10,000/- and if the duty involved is more than Rs.10,000/- the upper limit would be the duty involved. These Rules do not prescribe any minimum penalty. I also find that Larger Bench of the Tribunal in the case of CCE, Bhopal vs Rama Wood Craft(P) Ltd. reported in 2008(225)ELT.348(Tri.-LB) has also taken the same view. In view of these circumstances, I do not find any infirmity in the impugned order. The Revenue's appeal is dismissed.

Order dictated in the open Court.

(Rakesh Kumar)
Member Technical

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