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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/2029/2007 – SM[BR] Date 02/06/2009

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 ADVANCE LAMP COMPONENT & TABLE WARE (P) LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 514 / 2009 –SM[BR] dated 5.5.2009 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 ADVANCE LAMP COMPONENT & TABLE WARE (P) LTD.
   MOHAMMADPUR NAWADA MAKKANPUR, FIROZABAD
2. Adv. / Consult SHRI BIPIN GARG ADV.
   B-1/1289-A, VASANT KUNJ NEW DELHI

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
15 LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
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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

COURT – III

CENTRAL EXCISE APPEAL NO. 2029 OF 2007-SM

[Arising out of Order-in-Appeal No. 160-CE/APPL/KNP/2007 dated 30.03.2007 passed by the Commissioner (Appeals), Customs & Central Excise, Kanpur]

For approval and signature:

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?	
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
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

C.C & C.E., Kanpur — Appellant

Vs.

M/s. Advance Lamp Components & Table Ware (P) Ltd., — Respondents

Appearance:

Shri Sansar Chand, D.R. for the Revenue;
Shri Bipin Garg, Advocate for the respondent

Coram:

Hon'ble Mr. P.K. Das, Member (Judicial), Date of hearing/decision: 5th May, 2009

FINAL ORDER NO. 514/09-SM(DR) **dated** 5-5-09

Per P.K. Das:

Revenue filed this appeal against the order of the Commissioner (Appeals) whereby penalty under Section 11AC of Central Excise Act was set aside.

2. After hearing both sides and on perusal of the records, I find that the Central Excise officers visited the respondent's factory on 9.11.2005 and detected shortage of inputs involving central excise duty amounting to Rs. 1,97,959/-. The respondents admitted the shortage and deposited the duty on 16.11.2005. The original authority confirmed the demand of duty and appropriated the amount as deposited by them and also imposed penalty of equal amount under Section 11AC of the Central Excise Act, 1944. Commissioner (Appeals) set aside the penalty under Section 11AC. Hence, the Revenue filed this appeal.

3. Learned D.R. on behalf of the Revenue drew attention of the Bench to the relevant portion of the show cause notice whereby Shri Asish Bansal, Director of the respondent company in his statement stated that the staff of the respondent company had cleared the goods from the factory without issuing central excise invoices and without payment central excise duty thereon. Learned Advocate on behalf of the respondents submits that there is no material to show that goods were

removed clandestinely and the statement of the Director of the respondent company is not sufficient to impose penalty under Section 11AC of the Act. He further submits that the Hon'ble Delhi High Court in the case of CCE vs. Malbro Appliances P. Ltd., reported in 2007 (208) ELT 503 (Del.) held that even if manufacturer paid the duty within 30 days from the receipt of the order, penalty would be imposed 25% of duty determined.

4. I agree with the submission of the learned D.R. It is seen from the show cause notice that the Director of the respondent company admitted that the goods were cleared without payment of duty. So, it is a case of clandestine removal. Hence, penalty under Section 11AC of the Act is warranted. Hon'ble Delhi High Court in the case of Malbro Appliances (supra) held that First proviso to Section 11AC of the Central Excise Act, 1944 providing for penalty of 25% if duty demanded paid within 30 days of order. In the present case the respondents paid the duty before issue of show cause notice. Therefore, penalty would be 25% of duty determined i.e. Rs. 49,490/-. In view of the above discussion, order of the Commissioner (Appeals) is set aside and the order of the original authority is restored and the amount of penalty is reduced to Rs. 49,490/-. Appeal filed by the Revenue is disposed of in above terms.

(Dictated & pronounced in the Open Court.)

(P.K. DAS)
MEMBER (JUDICIAL)

RK