

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/403 /2007 – SM[BR]

Date 28/05/2009

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
Respondent

KEYMEN LAMINATORS PVT. LTD.

I am directed to transmit herewith a certified copy of **Final order No. 519 / 2009 –SM[BR]** dated 19.5.2009
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944


Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent

KEYMEN LAMINATORS PVT. LTD.

66-B, DADA NAGAR, KANPUR.

2. Adv. / Consult

MR.AMIT AWASTHI

113/145, SWARUP NAGAR, KANPUR-208002

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 Publications 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 Kuni, 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 (Harvana)

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Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Excise Appeal No.403 of 2007-SM (BR)

Arising out of Orders-in-Appeal No.618-CE/APPL/KNP/2006 dated
30.11.2006 passed by the Commissioner of Customs & Central Excise
(Appeals), Kanpur]

Date of Hearing/ Decision:19.05.2009

For approval and signature:

Hon'ble Mr. P.K. Das, Member (Judicial)

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- | | | |
|--|---|-----|
| 1. Whether Press Reporters may be allowed to see
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? | : | Yes |
-

CCE, Kanpur

.....Appellant

[Rep. by Shri Sansar Chand, DR]

Vs.

M/s. Keymen Laminators Pvt. Ltd.

...Respondent

[Rep. by None.]

CORAM: **Hon'ble Mr. P.K. Das, Member (Judicial)**

Final Order No. 519/09-SM (BR) Dated: 19.05.2009

Per P.K. Das:

Heard the ld. DR on behalf of the Revenue. None appears on
behalf of the respondent. By the written submissions, the respondent
requested to decide the matter in their absence on merits.

2. After hearing the ld. DR and on perusal of the records, it is seen that on 10.09.2004, the Central Excise Officers conducted physical stock verification and detected shortage of raw materials involving central excise duty of Rs.60,582/- and Education Cess of Rs.1,212/-. Shri Siddharth Gupta, Director of the respondent company in his statement dated 10.09.2004 accepted the shortage and also deposited the duty on 17.09.2004. The Original Authority confirmed the demand of duty of Rs.60,582/- and Education Cess of Rs.1,212/- and appropriated the amount as deposited by them. He refrained from imposition of penalty. Revenue filed appeal before the Commissioner (Appeals) for imposition of penalty of equal amount of duty. The Commissioner (Appeals) rejected the appeal.

3. I find from the Adjudication Order that Shri Siddharth Gupta, Director of the respondent company in his statement dated 10.09.2004 stated that the goods were cleared by the staff of the factory in his absence without raising any central excise invoices and without paying central excise duty leviable thereon. Hence, it is a clear case of clandestine removal of the goods. The Hon'ble Punjab & Haryana High Court in the case of Omkar Steel Tubes Pvt. Ltd. reported in 2008 (221) ELT 200 (P&H) held that the duty deposited before issue of show cause notice is not the reason for setting aside the penalty. It has been held that penalty would be imposed subject to the ingredients in the said Section is satisfied including the mensrea. In the present case, I find that the

respondents accepted that the goods were cleared without payment of duty and it is a case of clandestine removal of the goods. Therefore, penalty under Section 11 AC of the Central Excise Act, 1944 is warranted. It is noted that the Hon'ble Punjab & Haryana High Court in the case of Omkar Steel Tubes Pvt. Ltd. (supra) held that in terms of First Proviso to Section 11 AC of the Act, penalty would be 25% of the duty if the assessee paid the duty within 30 days from the date of receipt of the Adjudication Order. In the present case, the respondent deposited the duty before issue of show cause notice and, therefore, penalty would be 25% of the duty (i.e. Rs.15,448/-). Hence, the impugned orders are modified and the penalty is imposed to Rs.15,448/- (Rupees Fifteen Thousand Four Hundred Forty Eight only). The appeal filed by the Revenue is allowed.

Order dictated & pronounced in open court on 19.05.2009.

(P.K. Das)
Member (Technical)

Ckp.