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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/406 /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
S.S. POLYFILMS PVT. LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 523 / 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
S.S. POLYFILMS PVT. LTD.
45, UPTRON ESTATE, PANKI INDUSTRIAL AREA, PHASE NO.1, 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
15 LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
16 Office Copy
17 Guard file

Assistant Registrar
(SM Appeal Branch)

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

Excise Appeal No.406 of 2007-SM (BR)

Arising out of Orders-in-Appeal No.577-CE/APPL./KNP/2006 dated 16.11.2006 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)

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? : 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.

CCE, Kanpur .....Appellant

[Rep. by Shri R.K. Verma, DR]

Vs.

M/s. S.S. Polyfilms Pvt. Ltd. ...Respondent

[Rep. by None.]

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

Final Order No. 523/09-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 14.06.2005 the Central Excise Officers detected shortage of finished goods during their visit on 14.06.2005 involving central excise duty of Rs.1,06,886/- and Education Cess of Rs.2,138/-. Shri Ramesh Chandra Pandey admitted the shortage and deposited the duty on 16.06.2005. The Original Authority confirmed the demand of duty and appropriated the amount as deposited by them. He refrained from imposition of penalty. Revenue filed appeal before the Commissioner (Appeals), which was rejected.

3. I find that Shri Ramesh Chandra Pandey in his statement on 14.06.2005 stated that the goods found short were sold in his absence without payment of duty. Thus, it is a clear case of clandestine removal of the goods. The Commissioner (Appeals) observed that the respondent deposited the duty before issue of show cause notice and, therefore, penalty is not imposable in terms of the decision of the Hon'ble Punjab & Haryana High Court in the case of CCE, Ludhiana Vs. Omakar Steel Tubes (P) Ltd. reported in 2008 (221) ELT 200 (P&H), wherein it has been 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.

4. In the present case, I find that the respondents accepted that the goods were cleared without payment of duty and it is a clear 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.27,256/-). Hence, the impugned order is modified and the penalty is imposed to Rs.27,256/- (Rupees Twenty Seven Thousand Two Hundred Fifty Six 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.