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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/2009/2007 – SM[BR] Date 17/06/2009

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 J.S. PLASTICS & LEATHERWEARS Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 573 / 2009 –SM[BR] dated 5.6.2009 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 J.S. PLASTICS & LEATHERWEARS
D-3, FOUNDRY NAGAR, AGRA
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)
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.2009 of 2007

[Arising out of Order-in-Appeal No.99-CE/APPL./KNP/2007 dated 21.03.2007 passed by the Commissioner of Central Excise (Appeals), Kanpur]

Date of Hearing/ Decision:5.6.2009

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? : NA
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 ...Appellants

[Rep. by Shri V.K. Saxena, Jt. CDR]

Vs.

M/s. J.S. Plastics & Leatherwears ...Respondent

[Rep. by Shri Manyank Garg, Advocate]

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

Final Order No.573/09-SM (DB)/Dated:05.06.2009

Per P.K. Das:

Revenue filed this appeal against the order of the Commissioner (Appeals), whereby penalty imposed under Section 11 AC of the Central Excise Act, 1944 was set aside.\

2. After hearing both the sides and on perusal of the records, I find that on 11.11.2005, the Central Excise Officers visited the respondent's factory and conducted stock verification. The said officers ascertained shortage of raw materials involving central excise duty of Rs.71,100/-. The Authorised Signatory, Shri Vinod Kumar Agarwal, Authorised Signatory on the spot stated that the shortage of the inputs had been spilled over on the surface during loading/unloading of drums and as such shortage in said inputs occurred. However, the respondent accepted the shortage and deposited the duty on 24.11.2005. The Original Authority confirmed the demand of Rs.71,100/- and appropriated the amount as deposited by them. He also imposed penalty of equal amount under Section 11 AC of the Act. The Commissioner (Appeals) set aside the penalty under Sectiond 11 AC.

3. I find that the shortage was detected during stock verification of raw materials. The respondent accepted the shortage and deposited the duty. They have also furnished the reasons for the shortage and it was not ~~disclosed to~~ disputed by the department. The Hon'ble Punjab & Haryana High Court in the case of Commissioner of Central Excise, Ludhiana Vs. Omkar Steel Tubes Ld. – 2008 (221) ELT 200 (P&H) held that mere fact that duty has been paid before issuance of show cause notice would not result into in application of Section 11 AC and the penalty could still be imposed as long as various elements envisaged by Section 11 AC are satisfied including presence of mens reas.

4. In the instant case, there is no material available that the goods were cleared clandestinely and, therefore, imposition of penalty under Section 11 AC of the Act is not warranted. Hence, I do not find any reason to interfere the order of the Commissioner (Appeals). Accordingly, the appeal filed by the Revenue is rejected.

Order dictated & pronounced in open court on 5.6.2009.

(P.K. Das)
Member (Judicial)

Ckp.