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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/2309/2007 – SM[BR] Date 19/06/2009

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
C.C.E ALLAHABAD
38,M.G.MARG, CIVIL LINES, ALLAHABAD

C.C.E ALLAHABAD Appellant

Vs

M/S RAS POLYTEX PVT LTD Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 598 / 2009 –SM[BR] dated 9.6.2009 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 RAS POLYTEX PVT LTD
   E-11, INDUSTRIAL AREA, RAMNAGAR CHANDUALI(UP)
2. Adv. / Consult SHRI HEMANT BAJAJ ADV.
   SHRI BIPIN GRAG 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.2309 of 2007-SM (BR)

[Arising out of Order-in-Appeal No.78-CE/ALLD/2007 dated 16.04.2007 passed by the Commissioner of Central Excise (Appeals), Allahabad (U.P.)]

Date of Hearing/ Decision:9.6.2009

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?	: 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, Allahabad (U.P.) ...Appellant

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

Vs.

M/s. RAS Polytex Pvt.Ltd. ...Respondent

[Rep. by Shri Hemant Bajaj, Advocate]

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

Final Order No. 598/09 – SM(BR) /Dated:09.06.2009

Per P.K. Das:

Heard both sides and perused the records.

2. The Central Excise Officers visited the respondent's factory and detected shortage of finished goods involving central excise duty of

Rs.19,860/-, which was deposited by the respondent immediately. A show cause notice was issued proposing to impose penalty under Rule 173Q read with Section 11 AC of the Central Excise Act, 1944. The Original Authority imposed penalty of equal amount of duty (i.e. Rs.19,860/-) under Section 11 AC of the Central Excise Act, 1944. The Commissioner (Appeals) reduced the penalty to Rs.10,000/-. Hence, the Revenue filed this appeal for imposition of penalty of equal amount of duty.

3. Ld. Advocate submits that demand of duty was not confirmed under Section 11 A of the Central Excise Act, 1944 and, therefore, imposition of penalty under Section 11 AC is not justified.

4. I am unable to accept the contention of the ld. Advocate. The Revenue filed this appeal for enhancement of penalty amount and, therefore, the submission of the ld. Advocate has no force. It is seen that the duty is involved of Rs.19,860/- and the assessee deposited the duty before issue of show cause notice. The Hon'ble Delhi High Court in the case of Commissioner of Central Excise Vs. Malbro Appliances reported in 2007 (208) ELT 503 (Delhi) held that in terms of First Proviso to Section 11 AC, if the assessee deposited the duty within 30 days of the date of receipt of the Adjudication Order, the penalty would be imposed 25% of the duty.

5. In the present case, it is seen that the Commissioner (Appeals) reduced the penalty, which is more than 50% of the duty amount. Therefore, 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 9.6.2009.

(P.K. Das)
Member (Judicial)

Ckp.