TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

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/2230/2007 – SM [BR] Date 08/07/2009

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

To :
C.C.E. LUCKNOW
7-A, ASHOK MARG, LUCKNOW.

C.C.E. LUCKNOW Appellant
Vs
M/S HICKS THEMOMTERS (I) LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 669 / 2009 –SM[BR] dated 25.6.2009 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 HICKS THEMOMTERS (I) LTD.
   A-12 & 13, INDL. ESTATE, ALIGARH-01 UP
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 & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. IV
Excise Appeal No. 2230 of 2007 (SM)

[Arising out of the Order-in-Appeal No. 43-CE/LKO/2007 dated 26/04/2007 passed by The Commissioner (Appeals), Central Excise & Service Tax, Lucknow.]

For Approval and signature :
Hon'ble Shri Rakesh Kumar, Member (Technical)

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?	:
3.	Whether their Lordships wish to see the fair copy of the order?	:
4.	Whether order is to be circulated to the Department Authorities?	:

CCE, Lucknow — Appellant

Versus

M/s Hicks Thermometers (I) Ltd. — Respondent

Appearance

Shri S.N. Srivastava, Authorized Representative (DR) – for the appellant.

None – for the Respondent.

CORAM : **Hon'ble Shri Rakesh Kumar, Member (Technical)**

DATE OF HEARING : 25/06/2009.

Final Order No. 669/2009 SM(BR) Dated : ____________

Per. Rakesh Kumar :-

This is the appeal by the Revenue against order-in-appeal No. 43-CE/LKO/07 dated 26/04/07 passed by CCE (Appeals), Lucknow by which the Commissioner (Appeals) while confirming the duty demand against the respondent set aside imposition of penalty under Section 11AC.

2. None appeared for the respondent. Heard the learned Departmental Representative, Shri S.N. Srivastava, who pleaded that the respondent are manufacturer of thermometers and that in course of stock taking and scrutiny of their accounts by a team of Preventive Officers on 15/03/05, it was found that they had not paid duty on the value of thermometers supplied to the customers as free replacement/ free gifts and the duty chargeable on these goods was Rs. 25,290/-, that the appellant paid the duty immediately, that thereafter proceedings for confirmation of the duty demand alongwith interest and penalty were initiated and the Assistant

Commissioner, while confirming the duty demand alongwith interest imposed penalty of equal amount on the respondent under Section 11AC, that the Commissioner (Appeals) has wrongly set aside the penalty just on the ground that the duty and the interest had been deposited prior to the issue of the show cause notice, that from the records it does not appear that the interest had also been paid prior to the issue of show cause notice and H'ble the Commissioner (Appeals)'s reliance on the Karnataka High Court's judgment in the case of Shri Krishna Pipe Industries reported in **2004 (165) E.L.T. 507** and Mumbai High Court's judgment in the case of Gauram Mercantile Ltd. reported in **2005 (190) E.L.T. 11 (Bom.)** is not correct as in view of Hon'ble Punjab & Haryana High Court's judgment in the case of **CCE, Delhi – III vs. Machino Montell (I) Ltd.** reported in **2006 (202) E.L.T. 398 (P&H)** it is now a settled law that if the elements of Section 11AC are present, the penalty has to be imposed even if the duty and interest had been paid prior to the issue of show cause notice.

3. I have carefully considered the submissions of the learned Departmental Representative and perused the records.

From the facts of the case, as discussed in the order-in-original and in the order-in-appeal, it appears that this is not a case of clandestine removal of goods without payment of duty or a case of deliberate evasion of duty, as the show cause notice talks of charging of duty on the differential value of the goods cleared as free gifts or free replacement. The assessee had paid duty on lesser value than the value on which they were required to pay under some wrong impression. Therefore, this cannot be said to be a case where the conditions for invoking Section 11AC are present. In view of these circumstances, I hold that this case does not call for imposition of penalty under Section 11AC. Accordingly the impugned order is upheld. The Revenue's appeal is dismissed.

(Dictated and pronounced in open court)

(Rakesh Kumar)
Member (Technical)

PK