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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/241 – 242 / 2007 –SM[BR] Date 22/07/2009

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

To :
C.C.E. KANPUR
117/7, SARVODAYA NAGAR, KANPUR.

C.C.E. KANPUR Appellant
Vs
M/S GEETA INDUSTRIES (P) LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 730 – 731 / 2009 –SM[BR] dated 16.7.2009 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
1. M/S GEETA INDUSTRIES (P) LTD.
2. SHRI ASHOKA ARORA, DIRECTOR
120B & 125B, DADA NAGAR, KANPUR.

2. Adv. / Consult SHRI AMIT AWASTHI ADV.
113/ 145, SWAROOP NAGAR, KANPUR[U.P]

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
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Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI

COURT – III

EXCISE APPEAL NO. 241-42 OF 2007-SM

[Both rising out of common Order-in-Appeal No. 554-CE/APPL./KNP/2006 dated 10.11.2006 passed by the Commissioner (Appeals), Customs & Central Excise, Kanpur]

For approval and signature:

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

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?	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

Vs.

M/s. Geeta Industries Pvt. Ltd.,
Shri Ashoka Arora, Director — Respondents

Appearance:

Shri S.K. Bhaskar, D.R. for the Revenue;
Shri A.K. Dixit, Advocate for the respondents

Coram:

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

Date of hearing/decision: 16th July, 2009

FINAL ORDER NO. 730-731/2009-SM(BR) **dated** ________

Per P.K. Das:

Both the appeals are arising out of common order-in-appeal and, therefore, both are being taken up together for disposal.

2. Revenue filed these appeals against order-in-appeal whereby the adjudication order was upheld and appeal filed by the Revenue was rejected.

3. Relevant facts of the case, in brief, are that the respondent company is engaged in manufacture of Printed Laminated Fabrics. On 30th July, 2004 Central Excise officers visited the respondents' factory and conducted stock verification. Central Excise officers ascertained shortage of finished goods as well as raw materials involving central excise duty amounting to Rs. 1,52,000/- and Education Cess of Rs. 3,040/-. Shri Ashok Arora, Director and respondent No.2 herein admitted the shortage and paid the duty. Original authority confirmed the demand of duty and appropriated the amount as deposited by them. He did not impose any penalty and interest as per Section 11A(2B) of Central Excise Act, 1944, as they had already deposited the duty before issuance of show cause notice. Revenue filed appeal before the Commissioner which was rejected. Hence, Revenue filed these appeals.

4. Learned D.R. on behalf of the Revenue submits that respondent No. 2, Director of the respondent company admitted that goods were cleared without payment of duty from their factory. Thus, it is a clear case of clandestine removal of goods. Hence, imposition of penalty under Section 11AC of the Central Excise Act, 1944 is warranted. He also submits that respondent No. 2, Director of the company admitted that the goods were cleared without payment of duty and it was in his knowledge and, therefore, separate penalty under Rule 26 of Central Excise Rules, 2002 would be imposable.

5. Learned advocate on behalf of the respondent submits that the respondents deposited the duty before issuance of show cause notice voluntarily and penalty cannot be imposed under Section 11A(2B) of the Act. He also submits that the Tribunal has consistently taken view that if the assessee admitted the shortage and paid the duty no penalty under Section 11AC can be imposable. He relied upon the following decisions of the Tribunal:-

(i) CCE, Kanpur vs. Vacmet Packagings (India) Pvt. Ltd., reported in 2009 (239) ELT 29;

(ii) CCE, Kanpur vs. Quality Steel Products Ltd., reported in 2009 (239) ELT 30;

(iii) CCE, Kanpur vs. Narender Products, reported in 2009 (239) ELT 31

6. After hearing both sides and on perusal of the records, it is seen that Shri Ashok Arora, Director of the respondent company in his statement dated 30th July, 2004 admitted the shortage and on being asked about the reason of shortage, he explained that the goods were cleared from their factory premises without issuance of any invoice and without payment of duty by his staff. They debited the duty immediately. Thus it is clear case of clandestine removal of the goods. Hence, Section 11AC of the Act is liable to be invoked. Hon'ble Delhi High Court in the case of K.P. Pouches vs. UOI, reported in 2008 (85) RLT 483 (Tri.-Del.) held that First proviso to Section 11AC(1) of the Act provides that if the assessee paid the duty within 30 days of the receipt of the adjudication order, penalty would be 25% of the duty amount. In the present case, the respondent company deposited the duty before issuance of show cause notice and, therefore, penalty would be 25% of the duty amount (i.e. Rs. 38,760/-).

7. Learned Advocate relied upon the decision of the Tribunal, which are not applicable in the present case. It is seen that in the said cases representative of the assessee failed to explain the reason for shortage. But in the present case the respondent explained the reason for the shortage and it is admitted that the goods were cleared without payment of duty. So, penalty under Section 11AC is imposable.

8. In view of the above discussion, impugned orders are set aside. It is held that the penalty is imposable equal amount of duty under Section

11AC of the Act. However, the respondents have deposited the duty before issuance of show cause notice. **Therefore, penalty is reduced to Rs. 38,760/- subject to the respondents deposit the said amount within 30 days from the receipt of this order. In case the said amount is not deposited within the stipulated period, the respondents will deposit penalty equal to the amount of duty.** Regarding imposition of penalty on Shri Ashok Arora, the Director of the respondent company, I find that removal of goods without payment of duty was in his knowledge. As such, penalty is imposable under Rule 26 of the Rules. **Accordingly, I impose penalty of Rs. 10,000/- on Shri Ashok Arora, Director of the respondent company, under Rule 26 of Central Excise Rules, 2002.**

9. Both the appeals filed by the Revenue are disposed of in above terms.

(Dictated & pronounced in the Open Court.)

(P.K. DAS)
MEMBER (JUDICIAL)

RK