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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/2108/2007 – SM[BR] Date 04/08/2009

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

To :
M/S PARASRAMPURIA RUBBER PVT. LTD.
F-960, ROAD NO. 13 VKI AREA, JAIPUR

M/S PARASRAMPURIA RUBBER PVT. LTD. Appellant
Vs
C.C.E. JAIPUR I Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 865 / 2009 –SM[BR] dated 20.7.2009 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
C.C.E. JAIPUR I
N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.
2. Adv. / Consult SHRI BIPIN GARG ADV.
B-1/1289-A, VASANT KUNJ NEW DELHI-70.

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)
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Assistant Registrar
(SM Appeal Branch)

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

Excise Appeal No.2108 of 2007-SM (BR)

[Arising out of Order-in-Appeal No.97(GRM)CE/JPR-I/2007 dated 10.04.2007 passed by the Commissioner (Appeals), Central Excise & Customs, Jaipur]

Date of Hearing/ Decision:20.07.2009

For approval and signature:
Hon'ble Mr. P.K. Das, Member (Judicial)

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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.

M/s. Parasrampuria Rubber Pvt. Ltd. ...Appellants
(Rep. by Shri Bipin Garg, Advocate)

Vs.

CCE, Jaipur-I ...Respondent
(Rep. by Shri S.N. Srivastava, SDR)

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

Final Order No.565/2009-SM(BR)/Dated:20.07.2009

Per P.K. Das:

The relevant facts of the case, in brief, are that the appellants are engaged in the manufacture of HDPE/PP Bags classifiable under subheading No.3926.90 of the Central Excise Tariff Act, 1985. On 13.7.2005, the Central Excise Officers visited the appellants' factory and conducted stock verification. The said officers detected shortage of finished goods involving central excise duty of Rs.31,695/- during stock verification. Shri Raghuveer Singh, Authorized Signatory of the appellants accepted the shortage and debited the duty immediately. The Original Authority confirmed the demand of duty and appropriated the said amount as deposited by them. He also imposed penalty of equal amount under Section 11 AC of the Central Excise Act, 1944 and the penalty of Rs.10,000/- under Rule 25 of the Central Excise Rules, 2002. The Commissioner (Appeals) upheld the adjudication order.

2. The main contention of the ld. DR is that the appellants failed to furnish the reasons for shortage, which is implied clandestine removal of the goods. He also submits that if the Central Excise Officers have not detected the shortage, the duty could not be recovered.

3. On the other hand, ld. Advocate relied upon the decision of the Hon'ble Punjab & Haryana High Court in the case of CC Vs. Omkar Steel Tubes Pvt. Ltd. reported in 2008 (221) ET 200 (P&H), wherein it has been held that the penalty would still be imposed as long as various elements envisaged by Section 11 AC of the Act are satisfied including presence of mens rea. In the said case, the assesse failed to explain the reasons for shortage and the Original Authority imposed penalty, which

was set aside by the Tribunal. The Hon'ble High Court upheld the decision of the Tribunal.

5. In the present case, I find that the appellants failed to explain the reasons for shortage. There is no material available of clandestine removal of the goods. It is already decided by the Hon'ble Court that to impose penalty under Section 11 AC of the Act, mens rea is essential. As there is no evidence of clandestine removal of the goods, the imposition of penalty under Section 11 AC of the Act is not justified. However, there is contravention of the Rules and, therefore, imposition of general penalty under Rule 25 of the Rules will apply.

6. In view of the above discussions, penalty under Section 11 AC of the Act is set aside. As there is contravention of the Rules, penalty under Rule 25 of the Rules is reduced to Rs.5,000.00 (Rupees Five Thousand only). Ordered accordingly.

Order dictated & pronounced in open court on 20.07.2009.

(P.K. Das)
Member (Judicial)

Ckp.