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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/2595/2007 – SM[BR] Date 29/09/2009

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 RAM LAKHAN JAISWAL & CO. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1171 / 2009 –SM[BR] dated 9.9.2009 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 RAM LAKHAN JAISWAL & CO.
   BECHU KHAN URA, SULTANPUR (U.P)
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-1
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. 2595 of 2007 (SM)

[Arising out of the Order-in-Appeal No. 46-CE/2007 dated 25/04/2007 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 Ram Lakhan Jaiswal & Co. Respondent

Appearance

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

None (written submission) – for the respondent.

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

DATE OF HEARING : 09/09/2009.

Final Order No. 1171/2009-SM(BR) Dated : ____________

Per. Rakesh Kumar :-

In this case, the Central Excise Officers of Raibareli intercepted a consignment of 137.620 kg. of branded chewing tobacco (BCT) on 17/4/03 which had been cleared by the respondent without any invoice and without payment of duty. The value of the tobacco was Rs. 15,864/- (Rupees Fifteen Thousand Eight Hundred Sixty Four) and duty involved was Rs. 4,759/- (Rupees Four Thousand Seven Hundred Fifty Nine). The tobacco alongwith the conveyance in which the same being transported was seized. After issue of show cause notice, the Assistant Commissioner vide order-in-original dated 12/1/06 –

(a) ordered confiscation of the seized tobacco with option to be redeemed on payment of redemption fine of Rs. 5,000/- plus duty ;

(b) imposed penalty of Rs. 4,000/- on the respondent under Rule 25 (1) of Central Excise Rules, 2002 readwith Section 11AC of the Central Excise Act, 1944;

(c) ordered confiscation of conveyance used for transportation, with option to be redeemed on payment of redemption fine of Rs. 15,000/- ; and

(d) imposed penalty of Rs. 3,000/- on Shri Ramesh Kumar Jaiswal, owner of the vehicle and penalty of Rs. 2,000/- on Shri Babu Lal Jaiswal, driver of the vehicle.

1.1 Department was not satisfied with the quantum of penalty of Rs. 4,000/- imposed on the respondent as according to the Department, the minimum penalty prescribed under Rule 25 (1) is Rs. 10,000/- and accordingly the Department filed a review appeal before the Commissioner (Appeals), which was dismissed by the Commissioner (Appeals) vide order-in-appeal No. 46-CE/2007 dated 25/04/07. It is against this order of the Commissioner (Appeals) that the present appeal has been filed by the Department for enhancement of the quantum of penalty.

2. None appeared for the respondent, however, the respondent sent their written submission in which they pointed out that even if it is treated as the case of clandestine removal, the penalty of Rs. 4,000/- imposed is much more than the penalty of 25% of the duty involved, which would be attracted in their case.

2.1 Heard Shri S. Gautam, the learned Departmental Representative, who assailed the impugned order reiterating the grounds of appeal in the Revenue's appeal and emphasized that the minimum penalty prescribed under Rule 25 of Central Excise Rules, 2002 is Rs. 10,000/- and since this is a case of clandestine removal at least penalty of Rs. 10,000/- should have been imposed.

3. I have carefully considered the submissions of the learned Departmental Representative and have perused the records. There is no dispute about the fact that this is a case of clandestine removal and hence the provisions of Section 11AC would be attracted which prescribes penalty equal to the quantum of duty evaded. Since the duty involved is Rs. 4,759/-, and there is no indication in the order-in-original or

order-in-appeal that the respondents are covered by 1st proviso to Section 11AC having deposited the duty interest and 25% of duty towards penalty within a period of 30 days from the date of communication of the order-in-original, the penalty imposed on the respondent should have been equal to this amount i.e. Rs. 4,759/- while penalty of Rs. 4,000/- only has been imposed. Therefore, the order-in-original needs modification only to this extent. Since Section 11AC has been invoked for imposition of penalty, Rule 25 (1) would not be applicable. In view of this, the impugned order is set aside and the Assistant Commissioner's order-in-original is restored with modification, as mentioned above. The Revenue's appeal is partly allowed.

(Dictated and pronounced in open court.)

(Rakesh Kumar)
Member (Technical)

PK