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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

Date 28/10/2009

Appeal No. E/2816/2007 – SM[BR]

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

To :
C.C.E. RAIPUR
CENTRAL EXCISE BUILDING, DHAMTARI ROAD,
TIKRAPARA, RAIPUR 492001.

Appellant
C.C.E. RAIPUR

Vs

Respondent
M/S KALINDI ISPT (P) LTD

I am directed to transmit herewith a certified copy of **Final order No.** 1317 / 2009 –SM[BR] dated 5.10.2009 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 KALINDI ISPT (P) LTD
   VILLAGE BELPAN, TALUKA MASTURI, BILASPUR(CG)
2. Adv. / Consult SHRI A.K. MISHRA CONSU.
   1, CSC -6, FIRST FLOOR, PARK PLAZA, BEHIND SHAKYI APARTMENTS SECTOR-9, ROHINI DELHI -110085.

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)

# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, West Block No. 2, R.K. Puram, NEW DELHI

## COURT No. III

## CENTRAL EXCISE APPEAL NO. 2816 of 2007-SM

[Arising out of Order-in-Appeal No. 145/RPR-I/2007 dated 6.7.2007 passed by the Commissioner (Appeals), Customs & Central Excise, Raipur]

**Dated of hearing/decision: 5th October, 2009**

**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, Raipur — Appellant

Vs.

M/s. Kalindi Ispat Pvt. Ltd., — Respondent

**Appearance:**

Shri S.K. Bhaskar, SDR for the Revenue;
Shri A.K. Mishra, Advocate for the respondents

**Coram:**

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

**FINAL ORDER NO. 1317/2009 dated** SM (BR)

## Per P.K. Das:

Revenue filed this appeal against order of the Commissioner (Appeals). Learned D.R. on behalf of the Revenue submits that the original authority confirmed the demand of duty of Rs. 4,50,546/- and appropriated the amount as deposited by them and also imposed penalty of equal amount under Section 11AC of Central Excise Act, 1944. He submits that the Commissioner (Appeals) reduced the penalty to 25% of the amount of duty under first proviso to Section 11AC of the Act. He further submits that the respondents did not exercise the option under the provision of Section 11AC after receipt of order of the original authority and, therefore, Commissioner (Appeals) cannot reduce the penalty.

2. Learned Advocate relied upon the decision of the Hon'ble Delhi High Court in the case of K.P. Pouches (P) Ltd. vs. UOI, reported in 2008 (228) ELT 31 (Del.).

3. After hearing both sides and on perusal of the records, I find that the respondents deposited the duty immediately upon detection of shortage. The original authority confirmed the demand of duty and appropriated the said amount as already deposited by them. Penalty of equal amount was imposed and in addition a penalty of Rs. 20,000/- was also imposed under Section 25 of Central Excise Rules, 2002. The Commissioner (Appeals) modified the adjudication order insofar as penalty under Section 11AC of equal amount of duty reduced to 25% in

terms of first proviso to Section 11AC of the Act and set aside the penalty of Rs. 20,000/- under Rule 25 of the Rules. Revenue filed this appeal for modification of the order-in-appeal to enhance penalty of equal amount of duty.

4. First proviso to Section 11AC provides that where duty has been determined under Sub-section (2) of Section 11A and the interest payable thereon under Section 11A is paid within 30 days from the date of communication of the order of the Central Excise officer determining such duty, the amount of penalty liable to be paid by such person under this Section shall be 25% of the duty so determined. In the present case, the respondents deposited the entire amount of duty immediately upon detection which was duly appropriated by the adjudicating authority. Even then, imposition of penalty of equal amount of duty without giving option to the respondents in terms of first proviso to Section 11AC, of the Act is not justified. I find that the Commissioner (Appeals) had given the option in terms of first proviso to Section 11AC of the Act and the learned Counsel submits that they have already deposited the penalty as per order of the Commissioner (Appeals). The identical issue is decided by the Hon'ble Delhi High Court in the case of K.P. Pouches (P) Ltd. vs. UOI, reported in 2008 (228) ELT 31 (Del.) in favour of the assessee.

5. In view of that, I do not find any reason to interfere with the order of the Commissioner (Appeals). Accordingly, appeal filed by the Revenue is rejected.

(Dictated & pronounced in the Open Court.)

(P.K. DAS)
MEMBER (JUDICIAL)

RK