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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/2790/2007-2791/2007 – SM[BR] Date 29/10/2009

Assistant Registrar
C.E.S.T.A.T, New Delhi
To :
1. M/S NEO HY LAMINATES PVT LTD
2. SHRI PRADEEP KUMAR JAIN [DIRECTOR]
15 TH K.M. DELHI- ROHTAK HIGHWAY, VILL-
GANDHARA, DISTT- ROHTAK.

M/S NEO HY LAMINATES PVT LTD — Appellant

Vs

C.C.E. DELHI III — Respondent

I am directed to transmit herewith a certified copy of **Final order No. 1327 – 1328 / 2009–SM[BR]** dated 14.10.2009 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent

C.C.E. DELHI III

UDYOG MINAR, UDYOG VIHAR, VANIJYA NIKUNJ, PHASE V, GURGAON - 122016 (HARYANA)

2. Adv. / Consult

MR.BIPIN GARG

B-1/1289,A-VASANT KUNJ, NEW DELHI

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-III

Date of hearing/decision: 14.10.2009

Excise Appeal No. 2790-2791 of 2007-SM

[Arising out of order-in-Appeal No. 378-379/KKG/RTK/2007 dated 29.8.07 passed by the Commissioner (Appeals), Central Excise, Delhi-III]

For approval and signature:

Hon'ble Shri 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.	No.
2	Whether it should 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 Departmental authorities?	Yes

Neo Hy Laminates Pvt. Ltd. — Appellant
Mr. Pradeep Kumar Jain

Vs.

CCE, Gurgaon — Respondent

Appearance:

Appeared for the Appellant – Shri Atul Gupta, Co. Secy.

Appeared for the Respondent- Shri V.K. Saxena, Jt, CDR

Coram: Hon'ble Shri P.K. Das, Member (Judicial)

Final Order No. 1327 - 1328/2009 SM (BR)

Per: P.K. Das:

These Appeals have arisen out of common order and, therefore, both are taken up together for disposal.

2. The relevant facts of the case, in brief, are that the Appellant No. 1 engaged in the manufacture of decorative laminated sheets (paper base) and electrical insulator (paper base) falling under Chapter 48 and 85 of the First Schedule to the Central Excise Tariff Act, 1985. On 8.9.2005 the Central Excise officers visited the Appellant's factory and conducted physical stock verification of raw materials. The officers found shortage of finished goods during stock verification involving duty of Rs.1,03,717/-. The Appellant immediately deposited duty upon detection. Original Authority confirmed demand of duty and appropriated the same amount as deposited by the appellant and also imposed penalty of equal amount under Section 11AC of the Central Excise Act 1944 read with Rule 25 of Central Excise Rules 2002 on the Appellant No. 1. He also imposed a penalty of Rs.50,000/- on the authorised signatory, Appellant No. 2. The Commissioner (Appeals) upheld the Adjudication order.

3. After hearing both the sides and on perusal of the records, I find that the authorised signatory in his statement on the spot stated that for a long period there had been no stock taking and goods being of same size and were mixed up with other grades. The contention of the ld. Counsel on behalf of the Appellant is that there is no evidence of clandestine removal of the goods and, therefore, imposition of penalty under Section 11AC of the Act is not warranted. He relied upon the decision of the Hon'ble Punjab &

Haryana High Court in the case of **CCE, Chandigarh Vs. Nachiketa Paper Ltd.** – 2008 (225) ELT 194 (P&H). He also relied upon the decision of the Tribunal. On the other hand, the ld. Jt. CDR on behalf of Revenue submits that the appellant failed to furnish proper reason for shortage of the goods, which is simply removal of the goods clandestinely. He also submits that the case law relied upon by the ld. Counsel is in respect of raw material. But in the present case the issue relates to shortage of finished goods and, therefore, the said case is not applicable.

4. I find that shortage of the finished goods was detected during stock verification. The appellant paid the duty immediately after detection of the shortage. The appellant also furnished the reasons for shortage that due to long time there had been no stock taking. There is no material available that the goods were removed clandestinely. Section 11AC of the Act provides imposition of penalty in the case of fulfilment of ingredients as mentioned therein including mens rea. In the present case, there is no material available that the goods are removed without payment of duty and therefore Section 11AC of the Act is not warranted. However, I agree with the contention of the ld. Jt. CDR that there is contravention of the rules at least general penalty under Rule 27 is leviable. Accordingly, imposition of penalty is altered on Rule 27 and reduced to Rs.5,000/-. Accordingly, Appeal filed by the appellant No. 1 is disposed of in the above terms.

5. In view of that, penalty imposed on Appellant No. 2 is set aside. The Appeal of the Appellant No. 2 is allowed with consequential relief.

(Dictated & pronounced in open Court)

(P.K. DAS)
MEMBER (JUDICIAL)

RM