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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/262 /2009 – SM[BR]** Date **03/08/2011**

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

To :
C.E. NOIDA
C-56/42, SECTOR-62, NOIDA-201307

C.C.E. NOIDA Appellant

Vs

M/S VENTURE CONTROL SYSTEMS, Respondent

I am directed to transmit herewith a certified copy of **Final order No. 442 / 2011 –SM[BR]** dated 12.7.2011 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 VENTURE CONTROL SYSTEMS,
B-14, SECTOR-60, NOIDA.

2. Adv. / Consult SHRI S.D.GAUR CONSULTANT.
M/S RESPONDENT:------------------

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi -
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
BENCH-SM

Date of Hearing/Decision:12.07.2011

Excise Appeal No. E/262/09-SM

[Arising out of Order-in-Appeal No.123/CE/Appl./Noida/2008 dated 23.10.2008 passed by the Commissioner (Appeals) Central Excise, Noida].

Commissioner of Central Excise Noida ...Appellant

Vs.

M/s. Venture Control Systems ... Respondent

Present for the Appellant :Shri.S.K. Bhaskar, DR
Present for the Respondent:Shri.S.D. Gaur, Consultant

Coram: HON'BLE MR. D.N. PANDA, JUDICIAL MEMBER

Final **ORDER NO.** 442/2011 SM(BR) **DATED:**________

PER: D.N.PANDA

The short issue in this appeal is whether the respondent is entitled to any relief relating to penalty imposed under section 11AC of Central Excise Act, 1944. The claim of the respondent is that it had paid duty and interest for which no penalty is imposable. Ld. First Appellate Authority reduced the penalty of Rs.93,188/- to Rs.24,000/-.

2. Ld. DR supports the first appellate order.

3. Heard both sides and perused the record. There is no difficulty to grant concession in penalty as envisaged by first proviso to section 11 AC of Central Excise Act, 1944. The penalty imposable may be reduced to 25% of the duty demand. But for eligibility to the concession the appellant has to discharge the duty liability and interest within 30 days of service of the adjudication order. It has been held by Hon'ble High Court of Delhi in the case of K.P. Pouches (P) Ltd. vs. Union of India reported in 2008 (228) ELT 31 (Delhi) that an assessee entitled to get concession in penalty if that assessee discharges the duty liability and interest within 30 days of service of adjudication order. Therefore, the matter requires remand to the original authority to examine whether the appellant shall fall within the frame work of first proviso to section 11AC of Central Excise Act 1944 to get concession in penalty. If the authority is satisfied on the basis of evidence on record as to discharge of liability, following ratio laid down in para 27 of Judgement of Hon'ble High Court of Delhi in K.P. Pouches

(P) Ltd. vs. Union of India reported in 2008 (228) ELT 31 (Delhi) the appellant shall be entitled to concession in penalty.

4. In the result, the appeal is remanded to the original authority to grant fair opportunity of hearing to the appellant on the issue of concession in penalty and pass appropriate order.

[Dictated & Pronounced in the open Court].

(D.N.PANDA)
JUDICIAL MEMBER

Anita