15

.TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

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/1868/2009 &2083/2009 – SM [BR] E / CO / 165 /2009-SM[BR] **Date 21/12/2011**

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 SINGHAL PAINTS PVT. LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No. 895 – 896 /2011-SM[BR]** dated 30.11.2011 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 SINGHAL PAINTS PVT. LTD.
1-AISHBAGH ROAD, LUCKNOW.

2. Adv. / Consult SHRI S.N. SRIVASTAVA ADV.\
C-5, SECTOR-B, ALIGANJ, LUCKNOW.

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)

[2] **M/S SINGHAL PAINTS PVT. LTD.**
1-AISHBAGH, LUCKNOW-226024.

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

COURT NO. II

Central Excise appeal No. 1868 & 2083/2009-SM
With C.O. No. 165 of 2009

[Both arising out of Order-in-Appeal No. 78-CE/LKO/2009 dated 27.03.2009 passed by the Commissioner (Appeals), Central Excise & Service Tax, Lucknow].

Date of Hearing: 30th November, 2011

For approval and signature:

Hon'ble Shri D.N. Panda, Judicial Member

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 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?	

E/1868/2009

CCE, Lucknow — Appellant

Vs.

M/s. Singhal Paints (P) Ltd. — Respondent

E/2083/2009

M/s. Singhal Paints (P) Limited — Appellant

Vs.

CCE, Lucknow — Respondent

Present for the Assessee : Shri Vikrant Kackria,Advocate.
Present for the Revenue : Shri S.K. Bhaskar, D.R.

Coram: Hon'ble Shri D.N. Panda, Judicial Member

FINAL ORDER NO. 895-896/2011 SM(BR)

Per D.N. Panda:

Learned Counsel states that the first appellate order in so far as imposition of penalty of Rs. 10,000/- and Rs. 15,000/- are concerned is not pressed. He strenuously argued that imposition of penalty of Rs. 1,31,528/- in respect of raw material not found is not only unsustainable but Cenvat credit is also not reversible.

2. Learned D.R. on the other hand, submits that the learned Commissioner has considered the plea of the assessee and granted appropriate relief causing prejudice to Revenue waiving the redemption fine of Rs. 15,000/- in respect of finished goods and raw material confiscated being found in excess during the course of investigation.

3. Heard both sides and perused the record.

4. In so far as appeal of respondent on the penalty of Rs. 10,000/- and Rs. 15,000/- is concerned, it is dismissed as not pressed.

5. So far as penalty of Rs. 1,31,528/- is concerned the submission of the learned Counsel for the assessee is that the entire duty element with interest was discharged before issuance e of show cause notice for which issuance of show cause notice was not warranted. If at all penalty is impossible, that shall be reduced to 25% of the duty element.

He fairly accepted that such a reduced quantum of penalty was not paid while discharging duty and interest liability.

6. Learned Counsel has substance in his argument in so far as issuance of show cause notice in respect of admitted liability is concerned. Since the appellant had discharged the duty and interest liability without payment of 25% of duty amount towards penalty the appellant is directed to make payment of such reduced penalty within four weeks of receipt of this order. Learned Adjudicating Authority could have given this option to the assessee following the decision of Hon'ble High Court of Delhi in the case of K.P. Pouches – 2008 (228) ELT (Delhi) (Ref: Para 27 of the judgment). Since the matter has already traveled so many forums and the Tribunal having inherent jurisdiction to exercise all powers of the original authority itself, the option is granted by this order. So far as demand arose in respect of disallowance of Cenvat Credit i.e. Rs. 1,31,528/- is concerned that remains un-interfered.

7. Revenue's appeal praying for levy of redemption fine to the extent aforesaid is devoid of merit on the ground that the learned Appellate Authority did not find any justification for such levy at page 7 of his order. There may be a case where excess goods found remained unaccounted to cause willful evasion. But such a situation is not brought to record. Therefore, the Revenue's appeal fails and that is dismissed.

8. In the result, assessee's appeal is allowed partly and Revenue's appeal is dismissed. Cross Objection without any new ground is also dismissed.

(Pronounced in the open Court)

(D.N.PANDA)
JUDICIAL MEMBER

RK