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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/3542/2005 – SM [BR] **Date 23/12/2011**

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

To :
C.C.E LUDHIANA
F-BLOCK, RISHI NAGAR, LUDHIANA

C.C.E LUDHIANA Appellant
Vs
M/S NARESH FABRICS Respondent

I am directed to transmit herewith a certified copy of **Final order No. 920 / 2011-SM[BR]** dated 2.12.2011 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 NARESH FABRICS
B-III, 1133/1-A/1, BANK COLONY,
SHIVPURI ROAD, LUDHIANA

2. Adv. / Consult
NONE:--------------------

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

Excise Appeal No.E/3542/2005-SM

[Arising out of Order-in-Appeal No.347/CE/Appl/Ldh/2005 dated 15.07/2005 passed by the Commissioner (Appeals), Ludhiana].

CCE, Ludhiana ...Appellant

Vs.

M/s. Naresh Fabrics, ... Respondent

Present for the Appellant : Shri R.K. Verma, D.R.
Present for the Respondent: None

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

Date of Hearing/Decision:2.12.2011

Final **ORDER NO.** 920/2011-SM(BR) **DATED:**________

PER: D.N.PANDA

None present for respondent.

2. Shri Varma, ld.DR for Revenue states that appeal is only against dropping of penalty by Appellate Authority in concurrence with the adjudicating authority. The reasoning given in the appellate order that duty and interest paid before issuance of show cause notice is not a good law following Apex Court decision in

the case of Rajasthan Spinning Mills Ltd. reported in 2009(238) 3(SC).

3. Page 3 of the appellate order demonstrates the averment of ld. DR. To do justice to Revenue, the matter is remanded to the adjudicating authority to examine the issue of penalty in the light of Apex Court decision cited above if penalty was proposed in the show cause notice. Reasonable opportunity of hearing is to be afforded to Respondent.

[Dictated & Pronounced in the open Court].

(D.N.PANDA)
JUDICIAL MEMBER

Anita