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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/1901/2008 – SM[BR]** Date **28/12/2011**

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

To :
M/S HINDUSTAN PULVERIZING MILLS,
SP-9C, RIICO INDUSTRIAL AREA, KHUSKHERA,
BHIWADI, DISTT. ALWAR (RAJ.)

M/S HINDUSTAN PULVERIZING MILLS, Appellant

Vs

C.C.E. JAIPUR I Respondent

I am directed to transmit herewith a certified copy of **Final order No. 940 /2011-SM[BR]** dated 15.12.2011 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
C.C.E. JAIPUR I
N.C.R.BUILDING, STATUE
CIRCLE, "C" SCHEME, JAIPUR
302005.

2. Adv. / Consult
MR.V K AGGARWAL
B-82, LAJPAT NAGAR, PART-2, NEW DELHI-110024

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)

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

COURT NO. II

Central Excise appeal No. 1901/2008-SM

[Arising out of Order-in-Appeal No. 127(RKS)CE/JPR-1/2008 dated 09.06.2008 passed by the Commissioner (Appeals), Customs & Central Excise, Jaipur].

Date of Hearing/decision: 15th December, 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?	

M/s. Hindustan Pulverizing Mills — Appellant

Vs.

CCE, Jaipur-I — Respondent

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

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

FINAL ORDER NO. 940/2011 SM(BR)

Per D.N. Panda:

None present for the appellant. When the allegation was that M.R.P. was shown at a lower value resulting in under valuation as result of which there was loss of Revenue, the appellant did not contest duty element of Rs. 7,53,965/- before first appellate authority. The only challenge was against penalty of Rs. 7,53,965/- levied under Section 11AC of Central Excise Act, 1944.

2. Learned D.R. on behalf of Revenue says that the first appellate authority recorded suppression of fact in Para 7 of the appellate order. Once under valuation was established equal amount of penalty is payable.

3. Heard Revenue and also perused Para 2 of the appellate order about the allegation made against the appellant. In para 6 of the order, the authority has brought out manner of under valuation. There being no appeal against that, even before first appellate authority, under valuation sustains. Such an act calls for imposition of penalty.

4. There is finding that the appellant deposited entire duty amount with interest before issuance of show cause notice and penalty of Rs. 7,53,965/- arose under Section 11AC of Central Excise Act, 1944. No doubt in Para 7 learned Appellate Authority has brought out that there was repeated practice of under valuation from the year 2002-03 to 2005-06. Once the goods in question was subjected to Section 4A of Central Excise Act, 1944, it is surprising how Revenue allowed the appellant to take advantage for 3 years without any investigation done. While appreciating loss of Revenue occurred as above there is no circumstance to appreciate willful intention of the appellant to cause evasion in absence of cogent evidence.

5. It appears that some mathematical calculation has resulted in discrepancy which is patent from Para 6 of the order. Once such a feature comes out, it may not be proper to impose equal amount of penalty under Section 11AC of Central Excise Act, 1944. Therefore, on the above peculiar circumstance, the appellant is directed to make deposit of 25% of duty demand of Rs. 7,53,965/- towards penalty under the above section within 30 days from receipt of this order. Normally Tribunal does not prefer to take power of adjudicating authority to issue such direction. But the power of Tribunal being inherent to exercise all powers of adjudicating authority this direction has been issued to reduce the dispute keeping in view the ratio lead down by Hon'ble Delhi High Court in Para 27 of the judgement in K.P. Pouches (P) Ltd. - 2008 (228) ELT 31 (Del.) and also for the time granted by Hon'ble High Court in Para 25 of the said judgment. The appellant is directed to comply to this order by the aforesaid time frame otherwise it shall face consequence of equal amount of penalty.

6. In the result, appeal is partly allowed with the above direction.

(Pronounced in the open Court)

(D.N.PANDA)
JUDICIAL MEMBER

RK