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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/920 /2008 – SM[BR] Date 26/03/2010

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

To :
C.C.E. KANPUR
117/7, SARVODAYA NAGAR, KANPUR 208005.

C.C.E. KANPUR Appellant

Vs

M/S V.S.POLYPACK PVT. LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 349 / 2010 –SM[BR] dated 22.3.2010 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 V.S.POLYPACK PVT. LTD.
   79-A, INDUSTRIAL AREA,
   DADA NAGAR,
   KANPUR.
2. Adv. / Consult
   NONE;---------------

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)
16 Office Copy
17 Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
NEW DELHI, PRINCIPAL BENCH NEW DELHI

Appeal No.920 of 2008-SM (BR)

[Arising out of Order-in-Appeal No.44-CE/APPL/KNP/2008 dated 21.02.2008 passed by the Commissioner of Central Excise (Appeals), Kanpur]

Date of Hearing/ Decision:22.03.2010

For approval and signature:

Mr. M. Veeraiyan, Member (Technical)

1. Whether Press Reporters may be allowed to see CESTAT (Procedure) Rules, 1982.		Yes
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:	No
3. Whether Their Lordships wish to see the fair copy of the Order?	:	Seen
4. Whether Order is to be circulated to the Departmental authorities?	:	Yes

CCE, Kanpur ...Appellants
(Rep. by Shri S. Gautam, DR)

Vs.

M/s. V.S. Polypack (P) Ltd. ...Respondent
(Rep. by None)

CORAM: **Hon'ble Mr. M. Veeraiyan, Member (Technical)**

Final Order No.349/2010 SM (BR)/Dated:22.03.2010

Per M. Veeraiyan:

This appeal is by the Department seeking imposition of penalty under Section 11 AC.

2. None appears for the respondent. The notice issued to the respondent is returned undelivered with the remarks that the respondent has shifted their premises from their given address. Heard ld. SDR.

3. On 8.3.2006, the officers visited the factory premises of the respondent and they found shortage of stock in respect of one of the finished goods viz. HDPE Laminated Fabrics weighing 6000 Kgs. valued Rs.3,48,000/- involving a duty of Rs.56,794/-. The Authorised Signatory, Shri A.V. Awasthi admitted the shortage found during stock taking in presence of independent witnesses and explained the shortage as due to the fact that the said goods might have been cleared without payment of duty due to festival season. From the record, it appears that the said statement was not retracted. On the other hand, the party paid the entire duty amount on 31.3.2006. Under these circumstances, non-imposition of penalty by the Original Authority merely on the ground that the party has paid the duty involved before issue of show cause notice is not justified. The Commissioner's (Appeals) order in upholding non-imposition of penalty on this ground is thus not justified. However, there are concurrent findings of both the authorities in not imposing penalty on the respondent. There is no clear finding as to whether the goods have been clandestinely removed or whether it is merely a case of shortage.

4. In view of the above, I deem it appropriate to remit the matter to the Original Authority to consider the matter afresh. To enable the same, I

set aside the orders of the Authorities below insofar as the same relates to non-imposition of penalty and remit the matter to the Original Authority to decide the matter afresh after granting reasonable opportunity of hearing to both the sides.

Order dictated & pronounced in open court on 22.03.2010.

(M. Veeraiyan)
Member (Technical)

Ckp.