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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/1168/2008 - SM

Date 12/04/2010

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 KEYMEN LAMINATORS PVT. LTD. — Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 416 / 2010 –SM[BR] dated 6.4.2010 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 KEYMEN LAMINATORS PVT. LTD.
   66-B, DADA NAGAR,KANPUR. (U.P.)
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)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

COURT NO. II

Excise Appeal No. 1168 of 2008-SM

(Arising out of Order-in-Appeal No. 8-CE/APPL/KNP/2008 dated 28.1.2008 passed by the Commissioner (Appeals), Customs & Central Excise, Kanpur)

CCE, Kanpur — Appellant

Vs.

M/s Keymen Laminators (P) Ltd. — Respondent

Date of Hearing: 31.3.2010

Appearance :

Appeared for Appellant - Shri I. Baig, DR
Appeared for Respondent - None

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

Final Order No. 416/2010 SM (Br) dated............

Per D.N. Panda:

None present for the Respondent.

2. Ld. DR Shri Baig assists for disposal of the matter. Appeal was filed in this case on 17.4.2008. That is nearly two years old. Keeping the matter pending is not considered proper in view of no dispute to the duty liability in absence of any appeal by the

Respondent. Therefore the matter has been taken up for hearing today ~~as well as~~ to dispose the same to same the interest of justice. Ld. Commissioner (Appeals) has found that there was detection of shortage of the goods on the date of investigation. Also he has recorded that the Respondent has not challenged duty element but only pleaded waiver of penalty before him. He noticed that in absence of any corroborative evidence for the shortage of the stock penalty cannot be imposed.

3. Shri Baig, Ld. DR submits that once the duty element is not disputed by the Respondent, there is no question of any immunity to be granted in respect of penalty. The elements of proviso to Section 11A(1) of Central Excise Act, 1944 are present in this case by the very conduct of shortage noticed. The shortage is not explained. Therefore penalty is imposable. However, he is able to find that the duty was paid within 15 days of the investigation.

4. Heard ld. DR and also perused the record. There is no dispute that the duty became payable even by the order of the first appellate authority. But the reasoning given for waiver of penalty is not appealable reason. The detection of shortage itself established the manner of causing loss of Revenue. Once such a factual aspect comes out from record the respondent does not deserve any immunity from penalty. However, considering the ratio laid down by the 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 (Del.), Ld. Adjudicating authority shall do well to examine whether the Respondent is entitled to the concession of penalty to the extent of 25% of the duty amount, subject to verification of the challan ~~to be~~ showing deposit of the excise duty if any made and pass appropriate order to grant concession under specific provision of concession in Section 11AC of Central Excise Act, 1944.

5. The Respondent shall get proper opportunity of hearing before the ld. Adjudicating Authority while disposing the remand proceeding.

6. In the result, the matter is remanded to the ld. Adjudicating authority.

(Dictated & pronounced in open Court)

(D.N. PANDA)
JUDICIAL MEMBER

RM