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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/993 /2008 – SM[BR] Date 15/04/2010

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 KURELE PACKAGING PVT. LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 436 / 2010 –SM[BR] dated 8.4.2010 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 KURELE PACKAGING PVT. LTD.

G-23, PANKI INDUSTRIAL AREA, SITE-I,KANPUR.

2. Adv. / Consult SHRI K.K.ANAND ADV.
A-5, BASMENT LAJPAT NAGAR-III,
NEW DELHI

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,

West Block No.2, R.K.Puram, New Delhi

**COURT-III**

**Date of hearing/decision: 8.4.2010**

**Central Excise Appeal No.993 of 2008-SM**

Arising out of the order in appeal No.34-CE/APPL/KNP/2008 dated 29.1.2008 passed by the Commissioner(Appeals ), Customs & Central Excise, Kanpur.

For Approval and Signature:

Hon'ble Shri M. Veeraiyan, Technical Member

| | | |
|---|---|---|
| 1 | Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? | Yes |
| 2 | Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? | Yes |
| 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 |

C.C.& C.E., Kanpur ... Appellant

Vs.

M/s Kurele Packaging Pvt. Ltd. ... Respondent

Appearance:

Shri S.K. Bhaskar, Authorized Departmental Representative (JDR) for the Revenue and Shri Hemant Bajaj, Advocate for the respondent

Coram: Hon'ble Shri M. Veeraiyan, Member (Technical)

Oral Order No. 436/2010 SM (BR)

Per M. Veeraiyan:

This is an appeal by the Department against the order of the Commissioner (Appeals) No. 34-CE/APPL/KNP/2008 dated 29.1.2008.

2. Heard both sides.

3. When the Central Excise officers visited the factory premises on 25.3.2006 and conducted verification of stock , they found 15.575 MT. of plastic granules valued at Rs.9,45,184/- as short compared to the stock recorded in the books. The credit taken on the short found plastic granules was found to be Rs.1,55,255/-. The authorised signatory vide his statement

dated 25th March 2006 accepted the shortage and explained that the same was due to their staff removing the same without preparing invoice and without reversing the credit. The said statement was not retracted. The duty involved was subsequently deposited on 27.3.06. The original authority, in pursuance of the show cause notice dated 22.2.2007, confirmed the demand of duty and also imposed equal amount as penalty under Section 11AC read with Rule 15 of Cenvat Credit Rules, 2004. However, the Commissioner (Appeals) set aside the penalty.

4. Learned DR submits that in view of the fact that the case involved admitted clandestine removal of inputs on which credit has been taken, penalty under Section 11AC should have been sustained by the Commissioner (Appeals).

5. The learned Advocate submits that there is no corroborative evidence for clandestine removal. Learned Advocate, alternatively submits that as the duty involved stands paid before issue of show cause notice, the benefit of reduced penalty of 25% may be extended in terms of the decision of the Hon'ble Delhi High Court in the case of K.P. Pouches (P) Ltd. vs. UOI reported in 2008 (228) ELT 31.

6.1 I have carefully considered the submissions from both sides and perused the records. This is a clear case of clandestine removal of inputs on which cenvat credit has been taken. The authorised signatory has not retracted the statement. In fact, the said statement has been acted upon by making payment of the credit involved on the admitted clandestinely removed inputs. Under these circumstances, the question of further corroboration does not arise. After all, it is settled principles of law that what is admitted need not be proved. The investing officer is not expected and required to the waste time and energy for proving the admitted facts. Therefore, the original authority and Commissioner (Appeals) were not justified in not imposing the penalty under Section 15 of the Cenvat Credit Rules read with Section 11AC of the Central Excise Act.

6.2 However, the submission of the learned Advocate that in the event of imposition of penalty under Rule 15 of Cenvat Credit Rules read with Section

11AC , the benefit of reduced penalty in terms of the proviso to Section 11AC should be extended in the light of the ratio of the decision of the Hon'ble Delhi High Court in the case of K.P. Pouches (P) Ltd. is acceptable.

7. In view of the above, the appeal of the Department is allowed and the order of the Commissioner (Appeals) in so far as the same relates to setting aside the penalty is set aside. The order of the original authority in this regard is restored. However, the party is given an optin to pay the reduced penalty of 25% that is Rs.38,563.75 (rupees thirty eight thousand five hundred sixty three and seventy five paise only) provided they make the payment within 30 days from today. In the event of failure to pay the said amount within the specified time, the penalty imposed by the original authority shall be payable.

(M. Veeraiyan)
Member (Technical)

scd/