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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/889 /2008 – SM[BR] Date 12/05/2010

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 STANDARD NIWAR MILLS Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 501 / 2010 –SM[BR] dated 5.5.2010 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 STANDARD NIWAR MILLS

D-24, PANKI INDUSTRIAL ESTATE, KANPUR.KANPUR

2. Adv. / Consult SHRI BIPIN GARG ADV.
B-1/1289-A, VASANT KUNJ NEW DELHI-70.

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 Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
10 Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi - 110005
11 Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15
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Assistant Registrar
(SM Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

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

COURT-III

SINGLE MEMBER BENCH

Date of hearing/decision:5.5.2010

Central Excise Appeal No.889 of 2008 -SM

Arising out of the order in appeal No.05-CE/APPL/KNP/2008 dated 28.1.2008 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.Ex., Kanpur .... Appellant

Vs.

M/s Standard Niwar Mills .... Respondent

Appearance:

Shri S.K. Bhaskar, Authorised Departmental Representative (JDR) for the Revenue and Shri Atul Gupta, Advocate for the respondent

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

Final Oral Order No. 501/2010 SM (Br)

Per M. Veeraiyan:

This is an appeal by the Department against the order of the Commissioner (Appeals) No. 05-CE/APPL/KNP/2008 dated 28.1.2008 .

2. Heard both sides.

3. The officers visited the factory of the respondent on 7.12.2005 and found shortage of finished goods valued at Rs.8,51,956/- involving duty amount of Rs.1,39,039/-. Shri Nihant Agrawal, authorised signatory in his

statement dated 7.12.2005 admitted the shortage and stated that the goods have been cleared by the staff of the factory in his absence without issuing Central Excise invoices and without payment of duty. He agreed to pay the differential duty involved within six to seven days. It is seen from the records that duty involved was paid by debiting in PLA on 10.1.2006 and the same was intimated to the Department vide party's letter dated 27.2.2006. The statement of Shri Nihant Agrawal is not retracted. The original authority based on show cause notice dated 6.6.2006 confirmed the demand of duty along with interest and but did not impose any penalty on the ground that the disputed duty amount stood paid before issue of show cause notice. The Commissioner (Appeals) upheld the order of the original authority.

4. Learned DR reiterates the grounds of appeal and submits that in a case of admitted clandestine removal, merely because the duty stands paid before issue of show cause notice, no relief can be given from the provisions of Section 11AC. He relies on the decision of the Hon'ble Supreme Court in the case of UOI vs.Rajasthan Spinning Mills reported in 2009 (238) ELT 3 (SC).

5. Learned Advocate for the respondent strongly supports the order of the authorities below. Alternatively, he seeks the benefit of reduced penalty in terms of the proviso to Section 11AC in the light of the decision of the Hon'ble High Court of Delhi in the case of K.P. Pouches Ltd. vs. UOI reported in 2008 (228) ELT 31 (Del.).

6. It is a case of huge shortage of finished goods on the date of visit by the officers. The shortage ~~was admitted~~ and clandestine removal of the same without preparing invoices and without payment of duty stand admitted by the authorised signatory of the respondent. The statement is not retracted but the same has been acted upon and the duty involved stands paid. The respondent did not dispute the liability to duty before the original authority as well as before Commissioner (Appeals). The disputed issue involved is whether the respondent is liable to penalty under Section 11AC. As it is a clear case of admitted clandestine removal Section 11AC is clearly

attracted and the penalty is imposable. However, the authorities below have not imposed any penalty on the ground that the duty involved stands paid before issue of show cause notice which is clearly incorrect. However,, the benefit of reduced penalty, in terms of the proviso to Section11AC deserves to be extended as claimed by the learned Advocate for the respondent.

7. In view of the above, the appeal of the Department is allowed. Penalty of Rs.1,39,039/- is imposed under Section 11AC of the Central Excise Act as proposed in the show cause notice. However, the respondent is given an option to pay Rs.34,759.75 (rupees thirty four thousand seven hundred fifty nine and paid seventy five only)in terms of the proviso to Section 11AC provided they make the payment within 30 days from the date of receipt of this order. If they fail to pay within the prescribed time limit, the penalty payable would be Rs.1,39,039/-.

8. Appeal is disposed of on the above terms.

(M. Veeraiyan)
Technical Member

scd/