

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/1488/2008 – SM[BR]

Date 12/05/2010

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

To :
M/S SHINING ENGINEERING WORKS (FOUNDRY),
B-19, FOUNDARY NAGAR,HATHRAS ROAD,AGRA-
282006.
M/S SHINING ENGINEERING WORKS (FOUNDRY),

Appellant

Vs
Respondent

C.C.E. KANPUR

I am directed to transmit herewith a certified copy of Final order No. 507 / 2010 –SM[BR] dated 7.5.2010
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent

C.C.E. KANPUR

117/7, SARVODAYA NAGAR, KANPUR 208005.

2. Adv. / Consult

MR.BHASIN SETHI & ASSOCIATE

401,SATYAM CINEMA BUILDING,RANJEET NAGAR,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 Publications Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3

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Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

COURT NO. II

Excise Appeal No. 1488 of 2008-SM

(Arising out of Order-in-Appeal No. 168/CE/Appls./Kanpur/2008 dated 24.4.2008 passed by the Commissioner, Central Excise (Appeals), Kanpur)

M/s Shining Engineering Works (Foundry)

Appellant

Vs.

CCE, Kanpur

Respondent

Appearance:

Appeared for Appellant : Shri V.R. Sethi, Advocate

Appeared for Respondent : Shri S. Gautam, DR

Date of Hearing: **5.5.2010**

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

final Order No. 507 / 2010 SM (B) dated.....

Per D.N. Panda:

The Appellant has no dispute on the duty liability. But learned Counsel Shri Sethi appearing on behalf of the Appellant submits that since duty was paid at the time of clearance of the goods, imposition of penalty of Rs.13,600/- has caused undue hardship to the Appellant. If penalty at all be imposable, reasonable amount may be considered.

2. Ld. DR Shri Gautam agrees that duty element has been deposited as is coming out from para 12 (ii) of the order of

Adjudication. This is also clear from the operative part of the order since there was breach of law. Therefore penalty should be imposed to the extent of duty payable.

3. Heard both sides and perused the record.

4. This is a case of payment of duty liability much before the Adjudication was completed. Once such a factual position comes to light, the appellant may not be dealt deterrently under law. In view of concession granted by third proviso to Section 11AC of the Central Excise Act, 1944 and following the ratio laid down by 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, the Appellant shall face penalty to the extent of 25% of the duty liability subject to verification of deposit of duty particulars. The first Appellate order is accordingly modified to the extent of penalty as above. In the result, the Appeal is partly allowed.

(Dictated & pronounced in open Court)

(D.N. PANDA)
JUDICIAL MEMBER

RM