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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/2107/2008 – SM[BR] Date 09/12/2010

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 KRISHNA TREADS PVT. LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1380 / 2010-SM[BR] dated 25.11.2010 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 KRISHNA TREADS PVT. LTD.
   G-101, INDUSTRIAL AREA, PANKI SITE-III, 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 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
12 LAWCRUX Advisors Pvt Ltd. LAW House.1-8,Sector - 10. Faridabad 121003 (Haryana)
13 TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
14 Office Copy
15 Guard file

Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
Single Member Bench

Excise Appeal No.2107 of 2008-SM

(Arising out of Order-in-Appeal No.261-CE/APPL/KNP/2008 dated 27.06.2008 passed by the CCE(A), Kanpur)

Date of Hearing/Decision: 25.11.2010

For approval and signature:
Hon'ble Mr.M.Veeraiyan Member (Technical)

1	Whether Press Reporters 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 the 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

CCE, Kanpur — Appellant

Vs.

M/s.Krishna Treads Pvt.Ltd. — Respondent

Present for the Appellant : Shri K.P.Singh, SDR
Present for the Respondent: None

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

Final **ORDER No.** 1380/2010 SM(BR)

PER: M.VEERAIYAN

Heard learned SDR. None appears for the respondents, in spite of notice. On earlier occasions, also (that is on 03.08.10, 06.08 and 30.09.10), none appeared for the respondents.

2. When the officers visited the factory premises of the respondents on 13.02.06 and conducted verification of stocks, they found physical stock of 1325 kgs of plastic as against stock of 4251.6 kgs, the stock of 1081.4 kgs of printed laminated roll as against book stock of 5224.4 kgs and stock of printed pouch of 2277.3 kgs as

against the stock of 6167.3 kgs and the total value of short found goods was Rs.12,66,631. The director of the respondent company could not offer any explanation for shortage found of the finished goods. On 13.2.06, the entire amount of duty amounting to Rs.2,06,715/- was deposited. The original authority, in pursuance of the show cause notice, confirmed the demand of duty and imposed equal amount as penalty under Rule 25 read with Section 11AC. The party filed the appeal before the Commissioner (Appeals); did not contest the demand of duty but challenged the penalty imposed. The Commissioner (Appeals) set aside the penalty on the ground that the entire duty stands paid before issuance of show cause notice and also on the ground that it was not clear as to whether the shortage found was due to clandestine removal or wrong accounting.

4. Learned SDR reiterated the grounds of appeal.

6. I have carefully considered the submissions from both sides and perused the records. I find that the shortages were very substantial when compared to the stock as per the statutory records. The director of the respondent company was not able to offer any explanation and paid the entire duty before issuance of show cause notice. Merely because duty stands paid, the same does not absolve the company from penal action. Having recorded the production in the RG-1 register account, when such substantial shortage was found, the respondent has failed to account for the goods manufactured and entered in the statutory records attracting penal action under Rule 25 (1) (b) of the Central Excise Rules, 2002. I find that the show cause notice has invoked both Rule 25 and Section 11AC. In the given facts and circumstances of the case, in the absence of evidence relating to the clandestine removal like admission statement or private records, only the charge of improper

accounting stands established and the ingredients of Section 11AC are not proved and, therefore, only penalty under Rule 25 (1) (b) is warranted.

7. In view of the above the order of the Commissioner (Appeals) is set aside and the order of the original authority is restored and while restoring the order of the original authority, penalty of Rs.2,06,715/- imposed under Rule 25 read with Section 11AC is modified as penalty under Rule 25 and reduced to Rs.50,000/- (Rupees Fifty Thousand only).

8. The appeal of the department is partly allowed as above.

(Dictated and Pronounced in the open court)

(M.VEERAIYAN)
MEMBER (TECHNICAL)

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