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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/845 /2008 – SM[BR] Date 15/02/2010

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 RUBBER COMPLEX (INDIA), Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 222 / 2010 –SM[BR] dated 8.2.2010 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 RUBBER COMPLEX (INDIA),
   SHAHGANJ ROAD,AGRA.
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)
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Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

COURT NO. II

Excise Appeal No. 845 of 2008-SM

(Arising out of Order-in-Appeal No. 52-CE/APPL/KNP/2008 dated 21.2.2008 passed by the Commissioner (Appeals), Customs & Central Excise, Kanpur)

CCE, Kanpur — Appellant

Vs.

M/s Rubber Complex (India) — Respondent

Date of Hearing: 8.2.2010

Appearance :

Appeared for Appellant - Shri I. Baig, SDR
Appeared for Respondent - Shri Hemant Bajaj, Advocate

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

Final Order No. 222/2010 SM-(BR) dated............

Per D.N. Panda:

Revenue's grievance is against waiver of penalty imposed by ld. Commissioner (Appeals). But admitted fact in this case is that duty liability has been paid before issuance of show-cause notice. This being the position and the allegation being undisputedly shortage of stock through physical verification on 5.5.2006, there shall be levy of concessional penalty under third proviso to Section 11AC of Central Excise Act, 1944.

2. Ld. Counsel Shri Hemant Bajaj appearing for the Respondent opposes Revenue's Appeal submitting that this case shall be governed by Section 11A(2B) of Central Excise Act, 1944. There cannot be inconsistent view in this case since for last one week and also even in the Appeal No. E/828/08 today it has been decided to reduce the penalty, in such similar circumstances to 25% of the duty demand. This case is also to be governed by the same decision. Accordingly, Revenue's appeal is decided partly allowing the relief ~~stating~~ reducing the penalty to 25% of the duty demand.

(Dictated & pronounced in open Court)

(D.N. PANDA)
JUDICIAL MEMBER

RM