TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

# 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/141 - 142 /2009 – SM[BR] Date 23/11/2010

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 ALVIN LEATHER CRAFT PVT. LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No**.1288-1289 / 2010-SM[BR] dated 10.11.2010 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 ALVIN LEATHER CRAFT PVT. LTD.
   117/354, NAVEEN NAGAR, G.T.ROAD, 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)

SHRI R.K.PANDEY, AUTHORISED SIGNATORY OF
M/S ALVIN LEATHER CRAFT PVT. LTD. 117/354, NAVEEN
NAGAR, G.T.ROAD, KANPUR.

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
Court No.IV

E/Appeal No. 141-142/09-SM

(Arising out of order in appeal No.345-346/CE/Appeal/KNP/08 dated 19.9.08 passed by the Commissioner of Central Excise (Appeals), Kanpur)

Date of Hearing:10.11.2010

For approval and signature:

Hon'ble Mrs Archana Wadhwa, Member (Judicial)

---

1. Whether Press Reporters may be allowed to see CESTAT (Procedure) Rules, 1982? — No
2. Whether it should be released under Rule 27 of the CESTAT(Procedure) Rules, 1982 for publication in any authoritative report or not? — No
3. Whether Their Lordships wish to see the fair copy Of the order? — No
4. Whether Order is to be circulated to the Departmental Authorities? — Yes

---

CCE, Kanpur — Appellants

Vs

1.M/s Alvin Leather Craft Pvt Ltd — Respondent
2. Shri R.K. Pandey, Authorised Signatory

Appeared for the Appellant: Shri S.K. Bhaskar, SDR
Appeared for the Respondent: None

Coram: **Hon'ble Mrs. Archana Wadhwa ,Member (Judicial)**

Final ORDER - 1288-1289/2010 SM (BR)

Per Archana Wadhwa:

Being aggrieved with the order passed by the Commissioner (Appeals) in so far as the same has set aside the penalty imposed on the respodents, the Revenue has filed the present appeal.

2. I have heard Shri S.K. Bhaskar, learned SDR for the Appellant and none appeared for the respondent despite issue of notice.

3. Brief facts of the case are that during the course of physical verification of the stock of finished goods as well as of raw materials conducted by the preventive officers of Central Excise, Kanpur in the factory premises of the Appellant No.1 on 29.8.2006 in the presence of Shri R.K. Pandey, Authorised Signatory, shortages were detected in the stocks of raw materials, valued at Rs. 6,29,510/- involving Central Excise duty of Rs. 1,00,722/- and Education Cess of Rs. 2,014/-. On bein asked, Shri R.K. Pandey admitted the shortages in his statement recorded on the spot and stated that the said raw materials were found Short due to degradation. However, they debited the duty involved on the said shortages voluntarily before issue of show cause notice.

4. Accordingly, show cause notice dated 25.5.2007 was issued to the respondent which culminated into an order passed by the original authority confirming demand of duty of Rs. 1,02,736/- and imposing of equivalent amount of penalty under Section 11AC of the Act. In addition, penalty of Rs. 15,000/- was imposed upon Shri R.K. Pandey authorized signatory under Rule 26 of the Central Excise Rules, 2002.

5. On appeal against the above order, the Commissioner (Appeals) confirmed the demand as not contested. However, he set aside the penalty imposed on the ground that as the duty was deposited before the issuance of show cause notice, the penalty is not required to be imposed. He also set aside the penalty of Rs. 15,000/- on Shri R.K. Pandey, Authorized Signatory. The said order is impugned before the Tribunal.

5. As ~~per~~ the law on the issue of imposition of penalty to the extent of 100% of duty stand declared by the Hon'ble Supreme Court in the case of Dharmendra Textile Processors as reported in 2008 (231) ELT 3 SC, penalty to the extent of 100% of duty is required to

be imposed under Section 11AC and authorities have no jurisdiction to reduce the same. As such, in view of no challenge to confirmation of duty demand, I uphold the duty as also penalty imposed to the extent of 100%.

6. However, Tribunal in the case of Swati Chemicals & Others reported in 2009 (94) RLT 684 (CESTAT) and the judgment of the Hon'ble High Court of Gujarat in the case of M/s Exotic Associates Vs CCE as reported in 2010 (252) ELT 49 (Guj), has held that where no such option has been extended by the lower authorities, the same can be extended by the Tribunal. In view of the law declared above, I extend the option to the appellant to deposit entire duty, interest and 25% of the penalty within a period of 30 days from the date of passing of the present order, in which case the penalty shall stand reduced to 25% of the duty.

7. As regard penalty imposed on Shri R.K. Pandey, it is seen that no specific role stands attributed to him by the adjudicating authority. In absence of the same, imposition of penalty on Shri R.K. Pandey is not warranted. As such, the impugned order of setting aside the penalty on him is upheld.

8. The Revenue's appeal stands allowed and appeal against Shri R.K. Pandey is rejected.

(ARCHANA WADHWA)
Judicial Member

MPS*