

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
SINGLE MEMBER APPEAL BRANCH

Date 17/08/2010

Appeal No. E/2118/2008 - SM[BR]

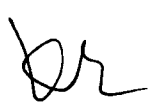
Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
C.C.E. KANPUR
117/7, SARVODAYA NAGAR, KANPUR 208005.
C.C.E. KANPUR

Appellant
Vs
Respondent

SHRI MANOJ KUMAR MALPANI, DIRECTOR OF

I am directed to transmit herewith a certified copy of Final order No. 879 / 2010 -SM[BR] dated 3.8.2010
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944


Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent

SHRI MANOJ KUMAR MALPANI, DIRECTOR OF

M/S GANPATI EDIBLES LTD., VISAYAKPUR, RANIA, KANPUR DEHAT.

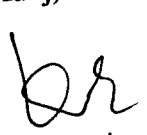
2. Adv. / Consult

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 Publications 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 (Harvana)
- 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. 2, R.K. Puram,
NEW DELHI**

COURT No. II

CENTRAL EXCISE APPEAL NO. 2118 of 2008-SM

[Arising out of Order-in-Appeal No. 253-254/CE/APPL/KNP/2008 dated 17.06.2008 passed by the Commissioner (Appeals), Customs & Central Excise, Kanpur]

CCE, Kanpur

Appellant
Reptd. by Shri I. Baig, SDR

Versus

Shri Manoj Kumar Pani,
Director

Respondent
None

Date of Hearing/decision: 3rd August, 2010

Coram: Hon'ble Shri D.N. Panda, Judicial Member

FINAL ORDER NO. 879/2010 SM(Br) DATED

Per D.N. Panda:

None present for the respondent. He has made an application for deciding the appeal on merit.

2. Learned D.R. supported the order of the adjudicating authority stating that this respondent had full control over the day-to-day affairs of the company and ~~was aware that~~ he was aware of the fact that the goods had been cleared without issuing invoices with intent to evade payment of duty. Therefore, he is liable to ~~be~~ ^{the} personal penalty. Learned Commissioner (Appeals)

ignoring valuable piece of evidence ^{waived} the penalty against the respondent. Therefore, adjudication is required to be restored.

3. Heard both sides and perused the record.

4. Revenue has come up in appeal against the first appellate order wherein the Commissioner (Appeals) found that this respondent was not directly responsible for the discrepancies in stock for which he should not be penalized. Para 7 of the show cause notice brought out charges against the respondent which reveals that being the Director of the unit the respondent appears to have full control over the day-to-day affairs of the unit and he must be ware of all the activities being carried out in the unit. In his statement dated 11.02.2006 he admitted that the goods were cleared without issuing any invoice with an intent to evade duty. Therefore, it appears that he must be aware of the activities carried out in the unit. The adjudication order says that the respondent was looking after day-to-day affairs of the party and was, thus responsible to ensure that appropriate Central Excise duty and Education Cess was paid on the excisable goods at the time of their clearance from the factory. It may be noticed that when there was doubt about the involvement ^{and} ~~of~~ control of the respondent on day-to-day affairs in the show cause notice, how adjudication order ^{inculcated} ~~involved~~ him and involved him in the activities of looking after day-to-day activities ^{without cogent evidence.} The adjudication appears to have traveled beyond the show cause notice without examining the statement recorded in the year 2006. It is common sense that no one shall confess that goods were cleared without issuing

invoices with intent to avoid payment of tax, ^{to cause him prejudice} All these doubts do
 not permit the quasi-criminal proceedings to sustain. It may be
 stated that because ^{penalty} is prescribed ~~penalty~~ by law that shall
 not be automatically imposed. The governing facts and
^{attendant} circumstances with cogent evidence should suggest that the doer
 has submitted himself to the offence or the ^{questionable} fact. In the present
 case the facts and circumstances failed to suggest to bring the
 respondent to that fold. Consequently Revenue's appeal is
 dismissed.

(Dictated & pronounced in the Open Court.)

(D.N. PANDA)
JUDICIAL MEMBER

RK