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

Appeal No. E/2784/2005 - EX[DB] Date **11/11/2011**

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 KOTHARI PRODUCTS LTD.** Respondent

I am directed to transmit herewith a certified copy of **Final order No.938/ 2011 EX[DB]** dated 04-11-11 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(Excise Appeal Branch)

**Copy to :**

1. Respondent
**M/S KOTHARI PRODUCTS LTD.**
KANPUR

2. Adv. / Consult SH. S. YADAVA, ADV., A-103, DEFENCE COLONY, N. DELHI-24
3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications. Customs. Excise. I.P. Estate. New Delhi
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. Taxmann Allied Service Pvt Ltd., 59/32. New Rohtak Road. New Delhi - 110005
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

Assistant Registrar
(Excise Appeal Branch)

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**
**West Block No. 2, R.K. Puram, New Delhi – 110 066.**

**Date of Hearing : 1.11.2011**

## Excise Appeal No. 2784 of 2005

[Arising out of common Order-in-Appeal No. 197-CE/APPL/KNP/2005 dated 28.3.2005 passed by the Commissioner (Appeals), Customs & Central Excise, Kanpur)

**Coram:**
**Hon'ble Shri S.S. Kang, Vice President**
**Hon'ble Shri Mathew John, Member (Technical)**

| | | |
|---|---|---|
| 1. | Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? | Yes |
| 2. | Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? | No |
| 3. | Whether their Whether their Lordships wish to see the fair copy of the order? | Seen |
| 4. | Whether order is to be circulated to the Department Authorities? | No |

CCE, Kanpur — Appellant

Vs.

M/s Kothari Products Ltd. — Respondents

**Appearance:**

Appeared for Appellant : Shri Sumit Kumar, DR
Appeared for Respondent : Shri S. Yadav, Advocate

CORAM: Hon'ble Shri S.S. Kang, Vice President
Hon'ble Shri Mathew John, Member (Technical)

FINAL Order No. 938/2011-EX .........dated............

**Per Mathew John:**

This is a case where short levy of excise duty amounting to Rs.19,88,887/- was demanded from the Respondents invoking the provisions of extended period of limitation as provided under Section 11A of the Central Excise Act. The duty demanded as also interest under Section 11AB was deposited by the Respondent even before passing of the Adjudication order. The Respondents had paid both the duty demand as well as interest and it is seen from the adjudication order that both are appropriated against the demands made. Further, a penalty equal to Rs.19,88,887/- was imposed under Section 11AC on the Respondents. Aggrieved by the order of the Adjudicating Authority the Respondents filed an Appeal with the Commissioner (Appeals). The Commissioner (Appeals) upheld the order confirming demand for duty as well as interest. However, he waived the penalty imposed under Section 11AC. Aggrieved by this order of the Commissioner (Appeals), the Revenue is before the Tribunal praying that penalty under Section 11AC may be imposed.

2. The counsel of the Respondent submits that there was no malafide intention and it was only on account of a bonafide interpretation of law that short levy has occurred. There was a dispute on the matter pending in High Court. The Respondents deposited the amount within reasonable time from the decision of the High Court.

3. We notice that the Respondent is not in appeal on the finding that extended period of time is invokable. So we do not propose to go into this issue. So penalty under Section 11AC is to be imposed. We

order accordingly. But we find that the Respondents have fully cooperated with department in this matter and paid duty element and interest. But the adjudicating authority did not give an opportunity to the Respondents to pay 25% of the duty demanded as penalty for closure of this case. So following the decision of the Delhi High Court in the case of **K.P. Pouches Vs. UOI** reported in 2008 (208) ELT 31 (Del.), we consider it proper to give an option to the Respondents to pay 25% of the duty demanded as penalty within 30 days of receipt of this order. Accordingly, the appeal filed by the Revenue is allowed.

(Dictated & pronounced in open Court)

(S.S. Kang)
Vice President

(Mathew John)
Member (Technical)

RM