

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL, KOLKATA**

EASTERN ZONAL BENCH: KOLKATA

Excise Appeal No. 316 / 2009

(Arising out of Order-in-Original No.
03/Commissioner/CE/Haldia/Adjn./2009 dated 30.01.2009 passed by the
Commissioner of Central Excise, Haldia Commissionerate, Kolkata)

Commissioner of Central Excise, Haldia

Applicant (s)/Appellant (s)

Vs.

M/s. Monalisa Garments

Respondent (s)

Appearance:

Shri D. Halдар, A.C.(AR) for the Appellant (s)

NONE for the Respondent (s)

CORAM:

Hon'ble Shri P.K.Choudhary, Member (Judicial)
Shri Bijay Kumar, Hon'ble Technical Member

Date of Hearing/Decision:- 14.05.2018

ORDER NO.FO/76058/2018

Per **Shri Bijay Kumar**

The present appeal has been filed by the Department against the
Order-in-Original No. 3/Commissioner/CE/Haldia/Adjn./2009 dated
30.01.2009 passed by the Commissioner of Central Excise,

Haldia Commissionerate, Kolkata wherein the Department has approached to us for wrong quoting of the provisions under which demand has been confirmed. The right course would have been to issue the corrigendum to the impugned order. However, not being done so, the Department has approached to us in appeal for the rectification of the aforesaid mistake.

2. We have considered whether by only merely putting of the information, provisions of the section will not vitiate the merit of the case laws. Therefore, we allow the departmental appeal on the provisions of the Section 11A2 as held in case of Collector of Central Excise, Kolkata Vs. Pradyumna Steel Ltd.[1996 (82) ELT 441 (S.C.)].

3. As far as the other issue regarding imposition of penalty on the appellant No. 3 and 4 are concerned, we find that Department has not filed a separate appeal. Defect memo was also issued by the Registry by letter dated-30/06/2009.

4. The situation being so, we dismiss the appeal in respect of noticee No. 3 and 4. The Departmental appeal is allowed in above terms.

(Dictated and Pronounced in the Open Court)

Sd/- 15/05/18

(P.K.Choudhary)
MEMBER(JUDICIAL)

Sd/- 15/05/2018

(Bijay Kumar)
MEMBER(TECHNICAL)

k.b/-