

F.No.275/40/2009-CX.8A

Government of India

Ministry of Finance

Department of Revenue

(Central Board of Excise & Customs)

Legal Section

New Delhi, the 21st May, 2009.

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**Subject:** Imposition of mandatory penalty equal to duty under Section 11AC even though duty is paid before the issue of Show Cause Notice. Supreme Court's judgement dated 12<sup>th</sup> May, 2009 in the case of U.O.I Vs. Rajasthan Spinning & Weaving Mills and Commissioner of Customs & Central Excise Vs. Lanco Industries Ltd. in Civil Appeal No.3525 of 2009 arising out of S.L.P (Civil) No.4078 of 2008.

The Hon'ble Supreme Court in the case of Union of India Vs. Dharmendra Textile Processors and other enjoined matters 2008 (231) E.L.T. 3 (S.C.) by its pronouncement of the rule has laid the question of applicability of equal penalty under Section 11AC of the Central Excise Act, 1944 at rest. It has categorically opined that the penalty prescribed in Section 11AC is mandatory in nature and it is a civil liability.

2. After the pronouncement of the said judgement, references have been received in the Board questioning the applicability of the said judgement to the cases where the duty has been paid prior to the issue of Show Cause Notice. In this regard, **I am to invite your attention to the judgement of Hon'ble Supreme Court in the case of U.O.I Vs. Rajasthan Spinning & Weaving Mills and Commissioner of Customs & Central Excise Vs. Lanco Industries Ltd. in Civil Appeal No.3525 of 2009 arising out of S.L.P (Civil) No.4078 of 2008 (copy enclosed)** wherein it has been clarified that when the conditions spelled out under Section 11AC of the Central Excise Act, 1944 are fulfilled, there is no discretion to reduce the mandatory penalty equal to duty even though the duty is paid before the issue of Show Cause Notice.

3. This is an important judgment in favour of Revenue and steps be taken to circulate it and bring to the knowledge of field formations as well as in the notice of Tribunals and Courts where similar cases are pending.

4. This issues with the approval of Member (L & J).

(M.D Singh)

Commissioner (L & J)

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