

**Alkarma Vs. Commissioner of Central Excise**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Jan-25-2005

**Reported in :** (2005)(182)ELT478TriDel

**Judge :** N T C.N.B., P Bajaj

**Appellant :** Alkarma

**Respondent :** Commissioner of Central Excise

**Judgement :**

1. The appellants are manufacturer of aluminium Doors, Windows and Partitions etc. On 28-9-1999, the Central Excise Officers visited the appellants' factory, and upon stock taking, pointed out certain shortages. The appellants deposited the duty due with regard to the goods found short. Subsequently, on 8-8-2002, a show cause notice was issued to the appellants invoking the extended period provided under Section 11A of the Central Excise Act, 1944.

2. In the present appeal, the Order is being challenged on many grounds, including jurisdiction. However, the basic grievance of the appellants is about the imposition of penalty on them i.e. equivalent to the duty amount.

3. We have heard both sides and gone through the record. We find that the duty demand is based only on the shortages detected at the time of stock taking by the Central Excise Officers. There is no evidence about the clandestine removal or manufacture of the goods by the appellants.

In these circumstances, the penalty was not warranted. Accordingly, the penalty imposed on the appellants is set aside and the appeal is allowed to that extent. Moreover, when the duty is deposited before the issuance of the show cause notice, the penalty is not permissible.

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