FAX : 0532-2400149

REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 16/12/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71134-71135/2016-SM[BR] dated 01/12/2016

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the Central Excise and Salt Act, 1944.

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	E/2922/2010	SPARK ELECTRODES P. LTD., A-48/9, SITE-IV, INDL. AREA, SAHIBABAD, GHAZIABAD.
2	E/3084/2010	CCE GHAZIABAD C.G. O. COMPLEX-II, KAMLA NEHRU NAGAR, GHAZIABAD 201302
		Name and Address of Respondent
3		SPARK ELECTRODES PVT. LTD. A-48/9, SITE-IV, INDUSTRIAL AREA, SAHIBABAD, GHAZIABAD. ,,
4		-C.C.E. GHAZIABAD C.G. O. Complex-II, Kamla Nehru Nagar, Ghaziabad 201302

Other Appellants and Respondents as per Annexure

Copy To

5Advocate(s) / Consultant(s):

Rajesh Chhibber, CAS ASSOCIATES
A-403, 414-415 SOMDUTT
FA-9,KAVI NAGAR
GHAZIABAD,UTTARPRADESH
201002

Bar Association, CESTAT, Allahabad

7 Director Publications, Customs, Excise. I.P. Estate, Delhi

8 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

9 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

10 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

11 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

12 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

13 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad -- 38

14 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

15 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

16 C.D.R. 17 Office Copy 18 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, REGIONAL BENCH : ALLAHABAD

COURT NO-II

Appeal Nos.E/3084 & 2922/2010-EX[SM]

Arising out of Order-in-Appeal Nos.108 & 109-CE/GZB/2010 dated 23.06.2010 passed by Commr. (Appeals) of Customs, Central Excise & Service Tax, Ghaziabad.

For approval and signature:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

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1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	: No
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	: Yes
3. Whether His Lordship wishes to see the fair copy of the Order?	: Seen
4. Whether Order is to be circulated to the Departmental Authorities?	: Yes

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C.C.E., Ghaziabad (in Appeal No.E/3084/2010)
M/s Spark Electrodes Pvt. Ltd. (in Appeal No.E/2922/2010)
...APPELLANT(S)

VERSUS

Sushil Kumar Goyal, Director of Spark Electrodes Pvt. Ltd. (in Appeal No.E/3084/2010)

C.C.E., Ghaziabad (in Appeal No.E/2922/2010)
RESPONDENT (S)

APPEARANCE

Shri D.K. Deb, Asstt. Commr. (A.R.) for the Department
None, for the Respondent-assessee (s)

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

DATE OF HEARING & PRONOUNCEMENT : 01.12. 2016

FINAL ORDER NO.- 71134-71135/2016

Per Mr. Anil Choudhary :

The issues in both appeals are, whether under the facts and circumstances, Commissioner (Appeals) have rightly retained the penalty under Section 11 AC on the respondent-Company, and whether, he has rightly deleted the penalty against the Director, namely Sushil Kumar Goyal.

2. The admitted facts are that the respondent-assessee is engaged in galvanization/manufacture of G I Pipes & Tubes including purchase of black pipes and, thereafter, galvanize the same. The factory premises of the respondent-company were inspected on 27.11.2007 by the Preventive Officers and physical verification of stock and finished goods, including Cenvatable inputs was done. A shortage was found of 137.589 MT in the stock of the said finished goods. The authorized person/supervisor Mr. Shish Pal Singh was not present in the factory (had gone to hospital), who later on reached at about 4.00 PM and, it is explained by him as well as the Director Mr. sushil Kumar Goyal, that due to his absence (of S.P Singh), the invoice could not be raised for the dispatch although, the goods were duly recorded in the RG-I register. As there was urgency for dispatch, the goods were dispatched without invoice, as due to absence of the authorised person, the invoice could not be raised. It was also urged that the Director, Mr. Sushil Kumar Goyal, does not come to the factory daily and only comes as and when required. The respondent-company immediately

debited the duty involved Rs. 10, 08, 365/ on the goods so removed. Thereafter, Revenue issued show cause notice dated 21.11.2008, proposing to determine the duty payable on stock found short, with further proposal to levy penalty under Section 11 AC read with Rule 25 of Central Excise Rules, 2002. Vide Order-in-Original, the SCN was adjudicated on contest and the proposed demand confirmed and equal amount appropriated which was debited on the date of inspection and, equal amount of penalty of Rs.10,08,365/- was imposed on the respondent-company, under Rule 25 of Central Excise Rules, 2002 to read with Section 11 AC of the Act and, penalty of Rs.2 lakh was imposed on the Director, Sushil Kumar Goyal.

3. Both, the Company and the Director filed appeal before the Ld. Commissioner (Appeals), who vide the impugned Order-in-Appeal have been pleased to uphold the penalty imposed on the company, but he was pleased to delete the penalty on the Director.

4. Being aggrieved, the Revenue is in appeal against the dropping of penalty and against the Director, whereas, the respondent-company is in appeal against confirmation of penalty. It is seen that Revenue have made a mistake in the cause title and instead of the name of Director as respondent have mentioned the name of the company. Learned A.R. for Revenue is directed to make correction in the cause title in the appeal memo, in course of the day.

5. Heard the parties.

6. Having considered the rival contentions, I find that in view of the

admitted facts that the goods were properly found to be recorded in the RG-I register, which is a statutory record, no case of clandestine removal is made out against the company & its Director. The Revenue have not found the cogent explanation given as untrue, at the time of inspection. I further find that the determination of liability to pay duty is a condition precedent for imposing penalty. If, after demand of duty, if the assessee without contesting the claim voluntarily paid the duty and interest payable thereon, for the delay in payment of duty, on the stipulated date, the question of the officer determining the duty payable would not arise. It is only in case duty is determined on the fact that the duty is evaded by reason of fraud, collusion or any willful misstatement or suppression of facts or contravention of any of the provisions of this Act or the Rules made thereunder, with the intent to evade payment of duty, the liability to pay penalty arises. In the instant case, I find that the determination of duty was not involved. Further, it is admitted fact that duty had been paid on the date of inspection. Thus the issue of show cause notice is *void ab initio*.

7. Thus, the appeal of Revenue against the Director is dismissed and the appeal filed by the appellant-assessee, No.E/2922/2010 is allowed.

(Dictated & Pronounced in the open Court)

Sd/-
(Anil Choudhary)
MEMBER (Judicial)

Ashish

सत्यापित प्रति / Certified True Copy
23.12