REGISTERED / AD

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

Dated: 30/12/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71193-71194/2016-SM[BR] dated 24/08/2016

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/602/2007	**SS POLY FILMS P LTD** 45, UPTRON ESTATE,PANKI KANPUR UP
2	E/604/2007	**VIJAY KANODIA** C/O SS POLY FILMS P LTD , 45, UPTRON ESTATE,PANKI KANPUR UP
		Name and Address of Respondent
3		C.C.E. & S.T.-Kanpur 117/7...SARVODYA NAGAR, KANPUR, UTTAR PRADESH-208005
4		C.C.E. & S.T.-Kanpur 117/7...SARVODYA NAGAR, KANPUR, UTTAR PRADESH-208005

Other Appellants and Respondents as per Annexure

Copy To

5Advocate(s) / Consultant(s):

Rajesh chibber
FA-9, KAVI NAGAR,
GHAZIABAD,
UP

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

Appeal Nos. E/602 & 604/2007-EX[SM]

Arising out of Order-in-Appeal No. 608/CE/APPL/KNP/2006 dated 30.11.2006 passed by Commissioner (Appeals), Customs & Central Excise, Kanpur.

For approval and signature:

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

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

(i) M/s. SS Poly Films P. Ltd
(ii) Vijay Kanodia, Dir. of M/s. SS Poly Films

...APPELLANTS

VERSUS

C.C.E. -Kanpur

...RESPONDENT

APPEARANCE

Shri Rajesh Chibber, Advocate for the Appellants
Shri Pawan Kumar Singh, (Supdt.) (A.R.) for the Department

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 24. 08. 2016

ORDER NO. 71193-71194/2016

Per Mr. Anil Choudhary :

The appellants are in appeal against order in appeal dated 30/11/2006 by which the penalty imposed under section 11 AC of the act read with rule 25 of CER, 2002, have been enhanced.

2. The brief facts are that the appellants manufactures of co extruded multilayer poly films had cleared their manufactured products and were also availing Cenvat credit on the inputs. Based on intelligence that the appellants were engaged in under valuation/misdeclaration of the goods cleared by them the Revenue recorded statement of Ramesh Chandra Pandey, Authorized Signatory on 7/2/2005 under section 14 of the Act wherein he stated that their unit during the period 2003-04 and 2004-05 (up to 7/2/2005) produced only Plain Poly Film and Corona Treated Multilayer Films and not the Lay Flat Tubes. On further query, how appellant sold Lay Flat Tubes in these years when the same has not been produced. It was further stated that they have shown Lay Flat Tubes in lieu of Plain Poly films on the invoices as Lay Flat Tubes attracts duty @ 8% whereas Plain Poly films attracted duty @ 16%. Further, facts are that the appellants accepted their mistake and ~~not~~ misrepresentation and deposited the differential duty with interest under intimation to Revenue. Thereafter, show cause notice dated 5/9/2005 was issued proposing to demand duty paid short amounting to Rs.1,68,610/- and Rs.38,014/- plus Rs. 213/- invoking the extended period of limitation with further proposal to appropriate the Excise duty, already deposited with further proposal to Levy penalty under Section 11 AC readwith

Rule of CER, 2002. The SCN was adjudicated on contest confirming the amount of duty as proposed and appropriating the same and further penalty of Rs.10,000/- was imposed under Section 11 AC of the Act read with Rule 25 on the appellant company and further penalty of Rs.5000/- was imposed on Shri Vijay Kanodia, Director of the unit. Being aggrieved the Revenue preferred appeal before learned Commissioner (Appeals), who vide the impugned order ~~having~~ was pleased to enhance the amount of penalty equal to the amount of tax on the appellant company and also enhanced the penalty imposed on Shri Vijay Kanodia to Rs.50,000/- observing that the case is not fit for lenient imposition of penalty as the evasion has taken place by way of mis-declaring the description of finished goods.

3. Being aggrieved, the appellants are before this Tribunal. The learned counsel for the appellant urges that it is an admitted fact that the appellants had cleared the goods manufactured and the waste, upon payment of Excise duty on the basis of invoices. It is further admitted fact that the Revenue have not found any quantity cleared, not recorded in the books of accounts and or statutory records. The learned counsel further urges that the appellant had deposited the duty on being so pointed out by the Revenue and as such no show cause notice was required to be issued as no duty remained to be determined which was payable from them on account of short paid amount. The said fact is apparent on the face of the record. The learned counsel further relied on the ruling of Hon'ble Karnataka High Court in CCE vs. Geneva Fine Punch Enclosures Ltd. 2011(267) ELT 481. The Hon'ble High Court has observed, the determination of the

liability to pay duty is a condition precedent for imposing penalty. If after demand, assessee voluntarily pays duty, question of officer determining duty payable does not arise. When duty is determined coupled with the intention to evade, liability to penalty arises. The appellant also placed reliance on the ruling of Hon'ble Supreme Court in the case of Amrit foods vs. CCE 2005 (190) ELT 433 wherein the Revenue had preferred appeal before Tribunal setting aside the imposition of penalty under Rule 173Q of CER, 1944. The Tribunal had set aside the order of Commissioner on the ground that neither the show cause notice nor the order of Commissioner specified which particular clause of Rule 173Q which is equivalent to the Rule 25 of CER, 2002 has been allegedly contravened by the appellants. Rule 173Q contains 6 clauses, the contents of which are not same. It was therefore necessary for the assessee to be put on notice as to the exact nature of contravention for which the assessee was liable under the provisions of section 173Q. This having not been done the Tribunal's findings cannot be faulted.

4. The learned A.R. for Revenue relies on the impugned order and further relies on the ruling of Hon'ble Punjab & Haryana High Court in the case of CCE vs. Machino Montell (I) Ltd. 2006(202) ELT 398, wherein under the facts and circumstances that the assessee had removed finished goods without issue of invoice and without payment of duty and further the said duty was deposited prior to the issue of show cause notice, the High Court observed, once a case is covered by situation as stated in the said section mere deposit of duty before

issue of notice, not necessarily negate situation mention in the said section.

5. Having considered the rival submissions, I find that there is no confiscation of any goods in the facts of this case which is a condition precedent for imposition of penalty under Rule 25 read with Section 11 AC of the Act. In this view of the matter the appeals are allowed and the impugned orders in appeals are set aside.

(Order was dictated in the open Court)

Sd/-
(Anil Choudhary)
MEMBER (Judicial)

Patel/-

प्रमाणित प्रति / Certified True Copy
6.1.17
सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण / (C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001