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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Appeal No. E/1333/2009 - EX[DB] & E/S/1341/2009-EX   Date 27/07/2009

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S KITPLY INDUSTRIES LTD.
SHAHABAD ROAD, RAMPUR.

M/S KITPLY INDUSTRIES LTD.   Appellant
Vs
C.C.E. MEERUT II   STAY ORDER NO.748/2009-EX   Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 490 / 2009 EX[DB] dated 20-7-09 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
   C.C.E. MEERUT II
   OPP. SAHEED PARK (NEAR ASHOK KI LAT) DELHI ROAD, MEERUT (UP)
2. Adv. / Consult SH.S.K.MATHUR,
   MR.LASA CONSULTANCY SERVICES.
   7, ROSHAN BAGH, CIVIL LINCES, RAMPUR (UP)

3 C.D.R
~~4 J.C.D.R.~~
5 Bar association, CESTAT, New Delhi
6 Director Publications, Customs, Excise. I.P. Estate, New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11 M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
12 Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
13 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15 LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
16 Office Copy
17 Guard file
18. HON'BLE PRESIDENT

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing/decision: 20.7.2009

Stay Application No.1341 of 2009 and
Central Excise Appeal No.1333 of 2009

Arising out of the order in appeal No.237-CE/MRT-II/2008 dated 22.12.2008 passed by the Commissioner (Appeals)-I, Customs & Central Excise, Meerut II.

For Approval and Signature:

Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri M. Veeraiyan, Member (Technical)

1	Whether Press Reporter 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 CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3	Whether their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

M/s Kitply Industries Ltd. .... Appellant/applicant

Vs..

C.C.& C.Ex., Meerut II .... Respondent

Appearance:

Shri S.K. Mathur, Chartered Accountant for the appellants/applicants
Shri B.K. Singh, Authorized Departmental Representative (Jt.CDR) for the Revenue

Coram: Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri M. Veeraiyan, Member (Technical)

STAY Oral Order No. 748/09-EX
FINAL ORAL ORDER NO 990/09-EX

Per M.Veeraiyan:

After waiving the pre-deposit of the dues as per the impugned order, we proceed to dispose of the appeal finally as only a small issue is involved in this appeal.

2. The appellants were required to pay basic excise duty ~~a sum~~ of Rs.6,00,900/- + Rs.4,000/- as cess for the month of May, 2006. They have deposited the cheque with the bank under TR 6 challans and took credit in their PLA and debited the duty due. It came to light that the bank dishonoured the cheque for want of fund and after receipt of the letter dated 23.3.2007 from the Excise authorities about the cheque having not been honoured by the bank, ~~factual position~~ they deposited the amount on 23.3.2007 along with interest. Thereafter, the show cause notice has been issued and in the adjudication proceedings apart from confirming the demand ~~payment~~, appropriating the duty subsequently paid, penalty of equal amount has has been imposed by the original authority and upheld by the Commissioner (Appeals).

3. Learned Consultant for the appellant submits that it was a bona fide mistake and that it was an isolated instance and that as soon as they came to know that the cheque was not honoured by the bank, they immediately deposited the duty along with interest. Therefore, invocation of Section 11AC deeming the clearance made in May 2006 as clandestine is not warranted.

4. Learned Joint CDR reiterates the finding of the Commissioner (Appeals). He also submits that if the penalty under Section 11AC is not attracted they are liable to penalty under Rule 25 for violation of Rule 8 and that Rule 25 of the Central Excise Rules has also been invoked in the show cause notice issued to them.

5. We have carefully considered the submissions from both sides. It appears that it was a bona fide mistake on the part of the appellants. In view of the cheque being not honoured, there is removal without payment of duty as stipulated under Rule 8. However, this cannot be treated as attracting the provisions of Section 11AC with an intent to evade payment of duty. At the same time, ~~However~~, we find that there is failure on the part of the appellant in ensuring that the credit taken in PLA was supported by the

genuine payment which resulted in removal without payment of duty due. This warrants some penalty to be imposed upon the appellants.

6. In view of the above, we modify the penalty of equal amount imposed under Section 11AC as a penalty of Rs.5,000/- under Rule 27 of the Central Excise Rules.

7. The appeal is disposed of in the above terms. Stay petition is also disposed of.

(Justice R.M.S. Khandeparkar)
President

(M. Veeraiyan)
Member (Technical)

scd/