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

Appeal No. E/2382 -2383 /2006 –SM [BR] Date 20/02/2008

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

1. To : M/S RITURAJ PITES & PLASTICS PVT LTD
2. SHRI KAMAL GURANI, DIRECTOR

F-116-118, RIICO INDUSTRIAL AREA, GUDLI,
UDAIPUR
313024

M/S RITURAJ PITES & PLASTICS PVT LTD Appellant

Vs

THE COMMISSIONER OF CENTRAL EXCISE JAIPUR Respondent

I am directed to transmit herewith a certified copy of Final order No.323 -324 /2008-SM [BR] dated 14.2.2008 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   THE COMMISSIONER OF CENTRAL EXCISE JAIPUR
   NCR BUILDING, STATUE CIRCLE, C-SCHEME,
   JAIPUR
2. Adv. / Consult SHRI. ATUL GUPTA C.S.
   B-1/1289-A, VASANT KUNJ NEW DELHI-110070

3. S.D.R.
4. ~~J.C.D.R.~~
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, marg. 43, saket, New
7. M/s Centax Publictions (P) Ltd., 1512-E, Bhishm Pitamah
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301
9. R.Venkatraman Constt. 44-B, S.Suncity, Ghaziabad -
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh,
12. Co, Law Institution
13. TAX INDIA, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI

COURT – II

EXCISE APPEAL NO. 2382-2383 OF 2006-SM

[Arising out of Order-in-Appeal No. 274-275(HKS)CE/JPR-II/2006 dated 27.04.2006 passed by the Commissioner (Appeals-II), Customs & Central Excise, Jaipur]

For approval and signature:

Hon'ble Mr. S.S. Kang, Vice President

1.	Whether Press Reporters may be allowed to see the order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3.	Whether their Lordships wish to see the fair copy of the order?	
4.	Whether order is to be circulated to the Departmental authorities?	

M/s. Rituraj Pipes & Plastics Pvt. Ltd.,
Shri Kamal Gurani, Director — Appellants

Vs.

CCE, Jaipur-II — Respondent

Appearance:

Shri Atul Gupta, C.S. for the appellants,
Shri A.K. Rastogi, SDR for the Revenue,

Coram:

Hon'ble Mr. S.S. Kang, Vice President

Date of Hearing: 12th February, 2008

FINAL ORDER NO. 323-24/08-SM(BR) dated 14.2.08

Per S.S. Kang:

Heard both sides.

2. The appellants filed these appeals against the impugned order whereby demand is confirmed in respect of finished goods found short and the goods found in excess were confiscated and allowed to redeem on payment of redemption fine.

3. Contention of the appellants is that they are situated under the jurisdiction of Hon'ble Rajasthan High Court. Hon'ble Rajasthan High Court in the case of UOI vs. T.P.L. Industries Ltd., reported in 2007 (214) ELT 506 (Raj.) has held that in case duty was paid before issuance of show cause notice no action can be initiated for imposition of penalty under Section 11AC of the Central Excise Act.

4. Further contention of the appellants is that in the present case there is no evidence to show that the goods were cleared without payment of duty. Contention is that for a long time stock taking was not undertaken, therefore, there is some difference between stock and the quantity mentioned in the statutory record. It is also mentioned that certain quantity of excess goods found in factory was confiscated

and there is no allegation that there is any intention to clear the same without payment.

5. Learned SDR submitted that the finished goods were found short and the appellants are enable to explain the reason for shortage and the goods found in excess has been admitted by the Director of the appellant company. Therefore, the impugned order is rightly passed.

6. I find that the duty has been paid before the issuance of the show cause notice and this fact is not under dispute. The only issue is, whether penalty is imposable under Section 11AC of the Act, if duty has been paid before issuance of show cause notice. I find that Hon'ble Rajasthan High Court in the case of UOI vs. T.P.L. Industries Ltd. (supra) has held that if the duty has been paid prior to issuance of show cause notice, penalty under Section 11AC is not sustainable. The appellants are situated under the jurisdiction of Hon'ble Rajasthan High Court, therefore, following the ratio of the above decision imposition of penalty is set aside, otherwise impugned order is upheld. Appeals are disposed of in above terms.

(Dictated & pronounced in the Open Court.)

(S.S. KANG)
VICE PRESIDENT

Dated 14th February, 2008

RK