

**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/1996/2006 AND 2593 /2006-SM[BR]

Date 04/04/2008

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

To :  
M/S RANA PAPER LTD [2] SHRI NOOR SALIM RANA. DIRECTOR  
8TH K.M.JANSATH ROAD, MUZAFFARNAGAR (U.P.) M/S RANA PAPER LTD;-----  
251001

M/S RANA PAPER LTD

Appellant


Vs

Respondent

THE COMMISSIONER OF CENTRAL EXCISE  
MEERUT-I

I am directed to transmit herewith a certified copy of Final order No. 550- 551 /2008-SM[BR] dated 29.1.2008

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  
MEERUT-I

MANGAL PANDEY NAGAR, MEERUT-I, U.P.

2. Adv. / Consult

MR.AALOK ARORA,ADV

82-MISSION COMPOUND,SAHARANPUR (U.P.)

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 Publications (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 AND SERVICE TAX APPELLATE  
TRIBUNAL, R.K. PURAM, W.B. NO.2, PRINCIPAL BENCH  
NEW DELHI, COURT NO. III**

**Excise Appeal No.1996 and 2593 of 2006-SM (BR)**

[Arising out of order in appeal No.40-41-CE/MRT-I/2006 dated 28.3.2006 passed by the Commissioner of Central Excise (Appeals), Meerut-I]

**Date of Hearing/ Decision:29.1.2008**

**For approval and signature:**

**Hon'ble Mr. P.K. Das, 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.         | : | } |
| 2. Whether it should 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?  | : |   |
- 

1. M/s. Rana Papers Ltd.  
2. Shri .Noor Salim Rana, Director

.....Appellants  
[Rep. by Ms.Alok Arora, Advocate.]

Vs.

CCE, Meerut-I

Respondent  
[Rep. by Mr. A. K. Rastogi, DR]

**CORAM: Mr. P.K. Das, Member (Judicial)**

*Final* Order No.558/2006/BR/Dated:29.1.2008

**Per P.K. Das:**

The relevant facts of the case in brief are that on 24.12.2001, the Central Excise officers visited the appellants' factory and verified the stock of inputs, final products and detected the shortage of stock of inputs and final products. The central excise officers also resumed various documents from the appellants' factory. The appellants admitted the shortage of the stocks and paid the duty on 8.3.2003 of Rs.95,185/- on the finished goods and Rs.57,330/- on the inputs. A show cause notice dated 13.8.2004 was issued proposing demand of duty and imposition of penalty on the appellants. The adjudicating authority confirmed the demand of duty on the shortage and appropriated the amount as deposited by them and also confirmed the demand of duty of Rs.38,568/- on the basis of invoice and G.R. and also imposed penalty upon the appellants. The Commissioner (Appeals) upheld the adjudication order.

2. Ld. Advocate on behalf of the appellant submits that the shortage was detected during stock verification and the appellants paid the duty before issue of show cause notice and, therefore, penalty under Section 11 AC cannot be invoked. He further submits that the adjudicating authority dropped the proceedings against all the invoices and GRs except one invoice and GR, against which no goods <sup>ky)</sup> were delivered. He further submits that

there is no evidence of clandestine removal and, therefore, imposition of penalty under Section 11 AC and Rule 13 of Cenvat Credit Rules are not sustainable. He also submits that that the appellant no.2 is the Director, he has no knowledge of the alleged clandestine removal of the goods and no penalty should be imposed.

3. Ld. DR reiterates the findings of the Commissioner (Appeals). He submit, that the appellant cleared the goods without payment of duty under the invoice and GRs and, therefore, demand of duty is correct. He further submits that it is case of clandestine removal of the goods and penalty is imposable. He also submits that the appellant no.2 was looking after the factory job and penalty is rightly imposable on him.

4. After hearing both the sides and on perusal of the records, I find that the demand of duty of Rs.91,185/- and Rs.87,330/-on the shortage of final products and inputs detected during the stock verification. The appellant also explained the reason for shortage. There is no evidence of clandestine removal of the goods. Therefore, the penalty under Section 11 AC of the Central Excise Rules as well as under Rule 13 of Cenvat Credit Rules, 2001 is not sustainable.

5. Regarding demand of duty of Rs.38,568/-, on the basis of Invoice and G.R.s, I find force in the submission of the ld. DR. The appellant contended

that the original invoice no.1016 dated 11.12.2001 in the name of M/s.Mickey Packers, Gorakhpur, was cancelled and duplicate was remained uncanceled due to oversight and the goods were not sent on this invoice. It has also been contended that another invoice in the name of Board and Paper Laminators, Delhi was prepared and the goods were sent. The contention of the Id. Advocate that the Department did not inquire the parties as mentioned in the invoices. I find that the duplicate copy of invoice was found at the premises of the appellants and they failed to produce any evidence of non-delivery of the goods on the basis of the said invoice. Further, GR No.406 dated 15.12.2001 was found at the premises of the appellant and no invoice was issued against the said GR. It is noted that GR is a transport document and the appellant failed to produce any invoice against the said GR. Therefore, demand of duty is justified. I find that the adjudicating authority, after examining the documents, confirmed the demand of duty on the basis of the said two evidences. Therefore, the demand of duty of Rs.38,568/- is justified. I also noted that it is a clear case of clandestine removal of the goods and, therefore, penalty of equal amount of duty under Section 11 AC is imposable.

6. The adjudicating authority imposed penalty on the appellant no.2 on the ground that he was looking after the work of the factory. The

Commissioner (Appeals) observed that penalty is imposable on the appellant no.2 because the appellants No.2's willful avoidance to appear before the investigating officers proves his guilt and involvement in the act of evasion of duty by the appellant. I find that Rule 26 can not be invoked for non-appearance against the summons. In any event, it appears that the appellant no.2 had knowledge of the clearance of the goods against the invoice and GR and penalty is imposable, but the amount of penalty is excessive.

7. In view of the above, the demand of duty of Rs.38,568/- and penalty of equal amount under Section 11 AC of the Central Excise Act, 1944 are upheld. The penalty on appellant no.2 is reduced to Rs.10,000/-. The penalty imposed under Section 11 AC of the Act, 1994 and Rule 13 of the Central Credit Rules on shortage of input and finished goods is set aside. The appeal is disposed of in the above terms.

Order dictated & pronounced in open court on 29.1.2008.

( P.K. Das )  
Member (Judicial)

Ckp.