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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/1316/2007 – SM[BR] Date 02/01/2009

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

To :
M/S TIJARIA OVERSEAS VINYAL
A-130(E), ROAD NO. 9D, VKI AREA, JAIPUR-302013

M/S TIJARIA OVERSEAS VINYAL Appellant
Vs
C.C.E. JAIPUR I Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1626 /2008 - **SM[BR]** dated 16.12.2008 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
   C.C.E. JAIPUR I
   N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.
2. Adv. / Consult
   MR.SANJAY GROVER
   LAW OFFICES, E-500, GREATER KAILASH-II, NEW DELHI-110 048.

3 S.D.R
~~4 J.C.D.R.~~
5 Bar association, CESTAT, New Delhi
6 M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017
7 M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New - 3
8 Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9 Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10 Nidheshak publications, I.P.Estate, new Delhi
11 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12 Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai
13 Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-1
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Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. IV
Excise Appeal No. 1316 of 2007 (SM)

[Arising out of the Order-in-Appeal No. 334 (GRM) CE/JPR-I/2006 dated 11/01/2007 passed by The Commissioner (Appeals-I), Customs & Central Excise, Jaipur.]

For Approval and signature :
Hon'ble Shri Rakesh Kumar, Member (Technical)

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 Department Authorities?	:

M/s Tijaria Overseas Vinyle — Appellant

Versus

CCE, Jaipur-I — Respondent

Appearance

Shri S. Grover, Advocate – for the appellant.

Shri A.K. Rastogi, Authorized Representative (DR) – for the respondent.

CORAM : **Hon'ble Shri Rakesh Kumar, Member (Technical)**

DATE OF HEARING : 16/12/2008.

Final Order No. 1626/08-SM(BR) Dated : 16-12-08

Per. Rakesh Kumar :-

The appellant had a unit at Kota for manufacture of PVC Pipes, Fitting, HDPE Pipes and Fitting, Flat Tubing, Irrigation Sprinkler System/Fitting falling under Central Excise Tariff Heading 39.17 and 84.24 respectively. Their unit was visited by the Jurisdictional Central Excise officers on 26/10/05 and at that time, on scrutiny of the RG-I register it was found that though the RG-1 register showed some stock of the finished goods, physically there was no stock. Subsequently physical stock verification of the goods was conducted in the presence of Shri Praveen Tijaria, partner of the company on 28/10/05 and 51333 metres of HDPE pipes/coils and 1407.05 kgs. HDPE Scrap were found short. On enquiry with Shri Praveen Tijaria, he explained that invoices as well as bilties have been issued in respect of 51333 metres pipes/coils as their unit is in the process of shifting to Jaipur and that in respect of 1407.05 kgs. shortage of scrap, the duty would be paid. The Assistant Commissioner, vide order-in-original dated 19/07/06 confirmed the duty demand of Rs. 1,92,833/- chargeable on 51333 metre of pipe/coils alongwith interest, ordered appropriation of the amount of Rs. 1,92,833/- paid on 14/11/06 towards this duty liability and imposed penalty of equal amount on the Appellant under Section 11AC. The Appellant's appeal against the Assistant Commissioner's order was dismissed by the CCE (Appeal), vide order-in-appeal dated 22/12/06, against which this appeal has been filed.

2. Heard both the sides.

2.1 Shri S. Grover, Advocate, appearing on behalf of the appellant made the following submissions :-

2.1.1 The appellant had a unit in Kota for manufacture of PVC Pipes and HDPE pipes and sprinkler irrigation system/fittings. They wanted to shift this unit to Jaipur for which a plot had already been acquired by them and the last consignment of the plant and machinery had been dispatched to Jaipur on 25th October 2005 and the finished goods under four invoices had been dispatched in the morning on 26/10/2005. On 26/10/05, the Central Excise Officers visited the Kota unit and when after scrutiny of RG-1 register, they enquired about the stock of the finished goods mentioned in the RG-1 register but physically not available, it was explained to them that the finished goods – 51333 mtrs. Of HDPE pipes have been dispatched to the Jaipur unit under four invoices. At the time of the central excise officer's visit, the invoices were not available as their employee who has prepared the invoices had to go for some urgent work and he had left those invoices in the factory at some place and the same were not traceable. He, however, said that the production of the goods covered by these invoices had been recorded in the RG-1 register and this shows there was no intention on the part of the appellant to evade the duty as had such intention been there, production would not have been recorded in the RG-1 register. He also emphasized that the production slips regarding the production of the goods upto 24/10/05 were available in the factory and the production figures in those production slips had been recorded in the RG-1 register, though some of the entries in RG-1 register were in pencil. The invoices were produced to the Central Excise officers on 11/11/05. Besides this, the duty on the goods removed was due by 5th November 2005 which they paid on 11/11/05 alongwith interest for six days' delay. In view of the above, he pleaded there was no intention on the part of the appellant to evade the payment of duty and the removal of the 51333 mtrs. Of HDPE pipes to their unit at Jaipur, where the factory was being shifted, cannot be treated as clandestine removal and, therefore, the penalty under Section 11AC was not called for.

2.2 The learned Departmental Representative counter the argument of the appellant made the following submissions :-

(1) There was no intimation to the Department regarding shifting of the factory from Kota to Jaipur. Even at the time of the officer's visit, neither any application had been made to the Jurisdictional Assistant Commissioner/Range Officer nor any application had been made for cancellation of the registration certificate in respect of Kota Unit.

(2) At the time of the officer's visit shortage of 51333 mtrs. of HDPE pipe was detected and the appellant could not give any valid reason for this shortage. The invoices produced on 11/11/05 appeared to have been issued only subsequently, as the same were not produced at the time of officer's visit and at the time of the officers visit, it was admitted by Shri Anil Kumar, a Supervisor, that the number of the last invoice ~~were~~ was 215 dated 25/10/05 while the invoices produced subsequently are four in numbers from 216 to 219 and this fact is confirmed

from the resume record, also. This shows that at the time of removal of the goods, the invoice No. 216 to 219, produced later, had not been issued.

3. I have carefully considered the submissions from both the sides. The dispute in this case is only about the penalty as the duty on the removal of 51333 mtrs. of HDPE pipes had already been paid alongwith interest though after due date. The Revenue's allegation is that this is case of clandestine removal as neither any intimation, whatsoever, about the shifting of the factory from Kota to Jaipur had been given to the Central Excise Offices nor at the time of the officer's visit to the unit, any invoices in respect of the quantity of 51333 mtrs. of HDPE pipes found short were produced and on the contrary at that time Shri Anil Kumar, Supervisor, said that the last invoice issued was invoice No. 215 dated 25/10/05 issued in the month of October 2005 and this shows that the duty payment was made only because of the detection of the shortage and the invoice No. 216, 217, 218 and 219 produced subsequently to the Central Excise Officers on 11/11/05, had actually been issued later and not at the time of dispatch of the goods. I find merit in the Revenue's contention as not

only no intimation had been given to the Department about the shifting of the unit, ~~the~~ a number of entries in the RG-1 register regarding the production of the goods had been made in pencil. I also find that no creditable explanation had been given as to why at the time of officer's visit to the unit, the invoice book could not be produced, as if the invoices had actually been issued at the time of dispatch of the goods to Jaipur on the morning of 26/10/05, the office copy of the same should have been there. In view of these circumstances, I find no merit in this appeal and no infirmity in the impugned order. The appeal is dismissed.

(Dictated and pronounced in open court.)

(Rakesh Kumar)
Member (Technical)

PK