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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/2588/2007 – SM[BR] Date 21/07/2009

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

To :
M/S R.A.S. POLYTEX PVT. LTD.
E-11, INUSTRIAL AREA, RAM NAGAR, CHANDAULI.

M/S R.A.S. POLYTEX PVT. LTD. Appellant
Vs
C.C.E ALLAHABAD Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 719 / 2009 –SM[BR] dated 10.7.2009 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 ALLAHABAD
   38,M.G.MARG, CIVIL LINES, ALLAHABAD
2. Adv. / Consult
   MR.BIPIN GARG
   B-1/1289,A-VASANT KUNJ, NEW DELHI

3 S.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
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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

COURT – III

EXCISE APPEAL NO. 2588 OF 2007-SM

[Arising out of Order-in-Appeal No. 130/CE/Alld/2007 dated 27.06.2007 passed by the Commissioner (Appeals), Central Excise, Allahabad]

For approval and signature:

Hon'ble Mr. P.K. Das, 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?	
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
3.	Whether their Lordships wish to see the fair copy of the order?	
4.	Whether order is to be circulated to the Departmental authorities?	Yes

M/s. R.A.S. Poly Tex Pvt. Ltd., Appellants

Vs.

CCE, Allahabad Respondent

Appearance:

Shri Mayank Garg, Advocate for the appellants;
Shri S.K. Bhasker, D.R. for the Revenue

Coram:

Hon'ble Mr. P.K. Das, Member (Judicial),

Date of hearing/decision: 10th July, 2009

FINAL ORDER NO. 719/2009-SM(BR) **dated** 10.7.09

Per P.K. Das:

Relevant facts of the case, in brief, are that the appellants are engaged in the manufacture of HDPE/PP Bags and fabrics and availed Cenvat facility. The appellants availed Cenvat credit on capital goods of 100% credit instead of 50% during the period April, 2000 to July, 2001 by mistake. Subsequently, they reversed the credit on 22.1.2002 along with interest. A show cause notice dated 16.8.2006 was issued proposing to impose penalty under Section 11AC of the Central Excise Act, 1944 and Rule 27 of the Central Excise Rules, 2002. Original authority imposed penalty of Rs. 50,601/- equivalent to 50% of the credit under Section 11AC of the Act and penalty of Rs. 5000/- under Rule 27 of the Rules for not producing the records to the auditors. Commissioner (Appeals) upheld the adjudication order.

2. Learned Advocate submits that the appellants by mistake availed 100% credit on capital goods during the period April, 2000 to July, 2001 and they reversed the credit along with interest as soon as it was detected on 22.1.2002. Show cause notice was issued after more than 4 years and 8 months. There is no intention to evade payment of duty. Hence, Section 11AC of the Act is not warranted. He further submits that they have produced the records before the audit party and penalty under Rule 27 of the Rules is not justified. He relied upon the decision of the

Hon'ble Punjab & Haryana High Court in the case of CCE vs, Sigma Steel Tubes & Nrs., wherein it has been held that for imposition of penalty under Section 11AC of the Act mens rea is essential. He also relied upon the decision of the Hon'ble Punjab & Haryana High Court in the case of Omkar Steel. He also relied upon the decision of the Tribunal in the case of CCE, Belgaum vs. Elveety Industries Pvt. Ltd., reported in 2008 (230) ELT 301 (Tri.-Bang.).

3. Learned D.R. submits that the appellants reversed the credit after detection by the Central Excise officers. He also submits that the appellants knowingly availed 100% credit on capital goods and, therefore, it is a case of suppression of facts with intent to evade payment of duty. He relied upon the decision of the Hon'ble Punjab & Haryana High Court in the case of Sai Machine Tools (P) Ltd. vs. CCE & C, Indore, reported in 2006 (203) ELT 15 (M.P.)

4. After hearing both sides and on perusal of the records, I find that the facts are not in dispute that the appellants availed 100% credit on capital goods during the period April, 2000 to July, 2001. During the audit, it was detected that the appellants have taken excess credit. It has also been alleged that the appellants have not produced the records to the audit party. However, the appellants reversed the credit immediately upon detection on 22.1.2002 along with interest. There is a long delay in issuing show cause notice of about more than 4 years. On perusal of the show cause notice, it appears that the appellants has contravened

provision of Rule 57AC of Cenvat Credit Scheme and are liable to penalty under Rule 57AH of Cenvat Credit Rules read with Section 11AC of the Act. It is well settled law that while imposing the penalty under Section 11AC it should be satisfied that ingredient as envisaged in the said section including mens rea. The learned D.R. relied upon the decision of Sai Machine Tools (P) Ltd. (supra) wherein the assessee cleared goods without payment of duty even after crossing SSI exemption limit, which is not applicable in the present case. In the present case there is no allegation of suppression of facts with intent to evade payment of duty. Therefore, imposition of penalty under Section 11AC of the Act is not warranted. However, there is contravention of law and, therefore, imposition of penalty under Rule 27 of the Rules not justified.

5. In view of the above discussion, penalty under Section 11AC is set aside. Penalty under Rule 27 of the Rules is upheld. Appeal is disposed of in the above terms.

(Dictated & pronounced in the Open Court.)

(P.K. DAS)
MEMBER (JUDICIAL)

RK