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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/2035/2007,2057/2007 – SM [BR] Date 04/08/2009

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

To :

• ROHIT GARG, MANAGING DIRECTOR OF M/S
TIRUPATI POLYTEX EXIM (P) LTD.
[2] M/S TIRUPATI POLYTEX EXIM [P] LTD.
AMILIHA, CHAUBEPUR, KANPUR

ROHIT GARG, MANAGING DIRECTOR OF M/S
TIRUPATI POLYTEX EXIM (P) LTD. Appellant

Vs

C.C.E. KANPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 866 – 867 / 2009 –SM[BR] dated 20.7.2009

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. KANPUR
   117/7, SARVODAYA NAGAR, KANPUR 208005.
2. Adv. / Consult
   MR.AMIT AWASTHI
   113/145, SWARUP NAGAR, KANPUR-208002

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
15 LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
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Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
NEW DELHI, PRINCIPAL BENCH NEW DELHI

Excise Appeals Nos.2035 & 2057 of 2007-SM (BR)

[Arising out of Order-in-Appeal No.158-159-CE/A passed by the Commissioner of Central Excise (Appeals),Gurgaon]

Date of Hearing/ Decision:20.07.2009

For approval and signature:

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

1. Whether Press Reporters may be allowed to see CESTAT (Procedure) Rules, 1982.		NA
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?	:	Yes

(1) Shri Rohit Garg, M.D.
(2) M/s. Tirupati Polytex Exim (P) Ltd. ...Appellants
(Rep. by Shri A.K. Dixit, Advocate)

Vs.

CCE, Kanpur ...Respondent
(Rep. by Shri Bipin Garg, Advocate)

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

Final Order No. 866-867/2009-SM(BR)/Dated:20.07.2009

<u>Per P.K. Das:</u>

The relevant facts of the case, in brief, are that the appellants are engaged in the manufacture of Polyfilm classifiable under sub-heading no.3920.10 of the Schedule to the Central Excise Tariff Act, 1985. On

2.2.2006, the Central Excise Officers visited the appellants' factory and checked the records relating to production and clearance of the goods. There is no dispute on the stock verification of raw materials and finished goods. However, during the search of the almirah kept in the office premises, the said officers found 10 loose paper slips. Shri Rohit Garg, Managing Director of the Company in his statement dated 2.2.2006 stated that any employee of the unit cleared the goods through delivery challans without issuing invoice and payment of duty. He also deposited the entire amount of duty of Rs.1,02,166/-. The Original Authority confirmed the demand of duty and imposed penalty of equal amount on the appellant company. He also imposed a penalty of Rs.15,000/- on Shri Rohit Garg, Managing Director, appellant no.2. The Commissioner (Appeals) upheld the Adjudication Order.

2. Ld. Advocate on behalf of the appellants submits that the appellants deposited the entire amount of duty before issue of show cause notice and, therefore, no penalty could be imposed. He further submits that even the employee of the company cleared the goods without the knowledge of the appellants cannot be treated as clandestine removal of the goods. His submission is that in this situation, Section 11 AC of the Central Excise Act cannot be invoked. He further submits that there is no material available that the appellant no. 2 had any knowledge of the removal of goods and no penalty can be imposed on him. He alternatively

submits that the appellants deposited the entire amount of duty before issue of show cause notice, in terms of First Proviso to Section 11 AC (1) of the Act, penalty would be 25% of duty, which they have already deposited.

3. Ld. DR on behalf of the Revenue reiterates the findings of the Commissioner (Appeals). He submits that the Managing Director of the appellant-company in his statement accepted that the goods were cleared without payment of duty. It is a clear case of clandestine removal of the goods and imposition of penalty under Section 11 AC of the Act is warranted. He further submits that the loose paper slips were recovered from the almirah of the office and it is the responsibility of the Managing Director, appellant no.2. So, the imposition of penalty on appellant no.2 is justified.

4. After hearing both the sides and on perusal of the records, I find that the respondent no.2 accepted that the goods were cleared without payment of duty. I agree with the submission of the ld. DR that it is a clear case of clandestine removal of the goods. As such, imposition of penalty under Section 11 AC of the Act is justified. The Hon'ble Punjab & Haryana High Court in the case of Commissioner of Central Excise, Rohtak Vs. J.R. Fabrics (P) Ltd. reported in 2009 (238) ELT 209 (P&H) held that First and IInd Proviso to Section 11 AC of the Act provides that if the assessee deposited the duty within 30 days from the date of

communication of the adjudication order, penalty would be 25% of duty.

5. In the present case, the appellants paid the duty before issue of show cause notice. So, the penalty would be 25% of duty (i.e.Rs.25,542.00).

6. Regarding imposition of penalty on appellant no.2, I find that the appellant no.2 is the Managing Director of the Company. He stated in his statement that the employees of the company cleared the goods. There is no material available that he had knowledge of the removal of the goods. So, the imposition of penalty on appellant no.2 is not justified.

7. In view of the above discussions, the demand of duty is upheld. Penalty imposed on the appellant no.1 is reduced to Rs.25,542/-. It is contended by the ld. Advocate that they have deposited a sum of Rs.25,000/- towards penalty. So, the appellants are directed to deposit balance amount of penalty of Rs.542/- within 30 days form the date of communication of this order, failing which the appellants are liable to pay the penalty of equal amount of duty. Penalty on the appellant no.2 is set aside.

Order dictated & pronounced in open court on 20.07.2009.

(P.K. Das)
Member (Judicial)

Ckp.