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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/1094/2007 – SM[BR] Date 21/01/2010

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

To :
M/S ANNAVARAM CONCRETE PVT. LTD.
BURHWAL, RAMNAGAR, BARABANKI (U.P.)

M/S ANNAVARAM CONCRETE PVT. LTD. Appellant

Vs

C.C.E. LUCKNOW Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 93 / 2010-SM[BR] dated 14.1.2010 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. LUCKNOW
   7-A, ASHOK MARG, LUCKNOW.
2. Adv. / Consult
   MR.K.K ANAND
   A-5,BASEMENT,LAJPAT NAGAR-III NEW DELHI-24

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)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-III

Date of hearing/decision:14.1.2010

Central Excise Appeal No.1094 of 2007-SM

Arising out of the order in appeal No.142-143-CE/2006 dated 12.6.2006 passed by the Commissioner (Appeals), Customs , Central Excise & Service Tax, Lucknow.

Hon'ble Shri M. Veeraiyan, Member (Technical)

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

M/s Annavaram Concrete Pvt. Ltd. ... Appellant

Vs.

C.C.E., Lucknow ... Respondents

Appearance:

Shri Hemant Bajaj, Advocate for the appellants
Shri V.K. Saxena, Authorized Departmental Representative (Jt.CDR) for the Revenue

Coram: Hon'ble Shri M. Veeraiyan, Member (Technical)

Oral Order No. 93/2010 SM (Br)

Per M. Veeraiyan:

This is an appeal against the order of Commissioner (Appeals) No.142-143-CE/2006 dated 12.6.2006.

2. Heard both sides.

3. The appellant is a manufacturer of P.S.C. Sleepers and one of the principal raw materials is cement. When the officers visited the factory on

27.2.2004 and verified the stock they found only 13183 PSC sleepers as against the stock as per record of 13913 sleepers and thus found shortage of 730; they also found only 7542 bags of cement as against stock, as per record, of 7992 bags thus a shortage of 450 bags. The authorised signatory in his statement given under Section 14 on the very same day stated that he was unable to offer any explanation instantly. The perusal of the subsequent statement dated 1.4.2004 also does not reveal any satisfactory explanation for the shortage of raw materials and finished goods. The original authority held that the goods have been clandestinely removed and confirmed demand of Rs.85,540/- along with interest and imposed equal amount as penalty. He also confirmed the demand of Rs.9000/- as wrongly availed credit on 450 bags of cement. Commissioner (Appeals) has upheld the order of the original authority.

4. Learned Advocate for the appellants submits that it was only a case of improper accounting and the shortage is only minimal and there was no evidence of clandestine removal relied upon The finished goods were basically meant for supply to Railways, therefore, he contests the demand of duty and imposition of penalty.

5. Learned Jt.CDR reiterates the finding and reasoning in the order of the Commissioner (Appeals).

6. I have carefully considered the submissions from both sides. The shortage of raw material and finished goods on the date of visit by the officers is not being disputed. The authorised signatory who claimed that he could not give explanation instantly has also not furnished any satisfactory explanation thereafter. The obligation of a manufacturer to account for raw materials on which credit has been taken and also account for finished goods which are manufactured and accounted in record of production is a strict obligation. In the absence of explanation for such shortage, the demand of duty along with interest has to be upheld. However, no evidence of any

clandestine removal such as private records or confessional statement have been relied upon and it appears that no investigation in this regard has been carried out. Under these circumstances, sustaining penalty under Section 11AC may not be justified. However, improper maintenance of accounts is clearly established inasmuch as the stock of finished goods as per statutory production record and stock of input as per RG-23 Part I were not found and there was shortage and no satisfactory explanation was forthcoming.

7. In view of the above, the appeal is disposed of by upholding the demand of duty along with interest and by converting the penalty imposed under Section 11AC as penalty under Rule 27 and reducing the same to Rs.5000/- (rupees five thousand only).

(M. Veeraiyan)
Member (Technical)

scd/