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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/455 /2008 – SM[BR] Date 21/01/2010

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

To :
M/S AKSH OPTIFIBRE LTD.

(PLANT-III), A-58 & 59,SHRI KHATUSHYAMJI,
RIICO,INDUSTRIAL AREA,RINGAS, DISTT. SIKAR
(RAJ.)

M/S AKSH OPTIFIBRE LTD. Appellant

Vs

C.C.E. JAIPUR I Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 102 / 2010- SM [BR] dated 15.1.2010 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. JAIPUR I
   N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.
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
15. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
16. Office Copy
17. Guard file

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:15.1.2010

Central Excise Appeal No.455 of 2008-SM

Arising out of the order in appeal No.339(RKS) CE/JPR-I/2007 dated 26.11.2007 passed by the Commissioner (Appeals), Central Excise , Jaipur.

For Approval and Signature:

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 Aksh Optifibre Ltd. ... Appellants

Vs.

C.C.E., Jaipur ... Respondent

Appearance:

Shri A. Gupta, Company Secretary with Shri Manish Saharan, Advocate for the appellants
Shri Mahesh Rustogi, Authorized Departmental Representative (SDR) for the Revenue

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

Oral Order No. 102/2010 SM (BR)

Per M. Veeraiyan:

This is an appeal by the party against the order of the Commissioner (Appeals) No. 339(RKS) CE/JPR-I/2007 dated 26.11.2007. The original authority confirmed the demand of duty of Rs.28,939/- along with interest in respect of goods cleared to another unit of the appellant company on the issue of incorrect adoption of valuation. However, he did not impose penalty under Section 11AC. On review and on filing of appeal before the Commissioner (Appeals), Commissioner (Appeals) imposed penalty of Rs.28,939/- under Section 11AC.

2. Learned Advocate for the appellants submits that it was not a case of clandestine removal; it was a case of differential duty arising out of incorrect determination of value which was due to misunderstanding.; he also submits that whatever duty was paid by the appellants was available as credit to the recipient unit which is also that of the appellant. Therefore, there is no intention to evade duty, and therefore, penalty under Section 11AC is not justified.

3. Learned SDR reiterates the finding and reasoning of the Commissioner (Appeals).

4. I find that in this case, the dispute involved relates to adoption of value relating to clearances made for captive consumption by another unit of the appellant company. Undisputedly, the recipient unit of the appellant is eligible for the credit of duty paid by the appellant. Under these circumstances, the intention to evade is clearly absent. The original authority also has refrained from imposing penalty.

5. In view of the above, I do not find any justification for sustaining the penalty imposed by the Commissioner (Appeals). The appeal is, therefore, allowed with consequential relief as per law.

(M. Veeraiyan)
Member (Technical)

scd/