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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/1663 – 1664 /2009 – SM [BR] E / CO / 170 -171 / 2009 –SM[BR] Date **13/01/2011**

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

To :
C.C.E. CHANDIGARH

C.R. BUILDING, PLOT NO. 19, SECTOR 17-C,
CHANDIGARH 160017

C.C.E. CHANDIGARH Appellant

Vs

SH. VIKAS GARG , PARTNER Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 44 -45 / 2011- **SM[BR]** dated 5.1.2011

passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
SH. VIKAS GARG , PARTNER
OF M/S KIRPALU STEEL
INDUSTRIES, VILL. KUMB, NEAR
BHAMBRI MILL, MANDI
GOBINDGARH
2. Adv. / Consult SHRI VIKRANT KARKRIA ADV.
H.NO.5, SECTOR 10-A, CHANDIGARH.

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New Delhi
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
9. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
10. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
13. Office Copy
14. Guard file

Assistant Registrar
(SM Appeal Branch)

3. SH. RITESH GARG , PARTNER
OF M/S KIRPALU STEEL
INDUSTRIES, VILL. KUMB, NEAR BHAMRI MILL, MANDI, GOBINDGARH.

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
SINGLE MEMBER BENCH

Excise Appeal No.E/1663-1664 of 2009-SM
Excise Cross Objection No.E/CO/170-171 of 2009-SM

Date of Hearing: 05.01.2011
Date of Decision: 05.01.2011

(Arising out of Order-in-Appeal No.169-170/CE/CHD/2009 dated 23.03.2009 passed by the CCE(A), Chandigarh)

For approval and signature:
Hon'ble Mr.M.Veeraiyan 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?	Yes
2	Whether it should be released under Rule 27 of the 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

CCE, Chandigarh — Appellant

Vs.

1.Shri Vikash Garg, Partner — Respondent
2.Shri Ritesh Garg, Partner of M/s.Kirpalu Steel Industries

Present for the Appellant: Shri K.P.Singh, SDR
Present for the Respondent: Shri Vikrant Karkria, Advocate

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

Final **ORDER NO.** 44-45/2011 SM (BR)

PER: M.VEERAIYAN

These appeals are filed by the department against the order of the Commissioner (Appeals) No.169-170/CE/LDH/2009 dated 23.03.2009., by which the penalties of Rs.2 lakhs imposed on each of the two partners have been set aside. The cross objection No.170-171/09 are connected to these appeals and basically in support of the order of the Commissioner (Appeals).

2. Heard both sides.

3.1 The relevant facts, in brief, are that M/s.Kirpalu Steel Industries is a partnership firm consisting of four partners including Shri Vikash Garg and Shri Ritesh Garg. The firm is engaged in the manufacture of M.S.Bars and Patra. On the basis of investigation, a show cause notice dated 1.8.2008 was issued to M/s.Kirpalu Steel Industries and the above two partners proposing the demand of duty of Rs.17,62,106/- for the firm and proposing penalties on M/s.Kirpalu Steel Industries and the partners Shri Vikash Garg and Shri Ritesh Garg. M/s.Kirpalu Steel Industries paid part of the duty during the course of investigation and paid the balance amount of duty and 25% of total duty amount of proposed demand as penalty within the time limit specified under proviso to Section 11A(2).

3.2 On 01.09.2009, the adjudicating authority passed the following orders:-

> *"The proceedings against M/s.Kirpalu Steel Industries are treated as concluded under the proviso to sub section (2) of Section 11A of Central Excise Act, 1944.*
>
> *I impose a penalty of Rs.2 lacs each individually and separately on Shri Ritesh Garg and Shri Vikash Garg, both partners of M/s.Kirpalu Steel Industries, Mandigobindgarh under Rule 26 (1) of the Central Excise Rules, 2002."*

3.3. On appeal by the two partners, the Commissioner (Appeals) has set aside the penalties and allowed the appeals. Hence the department has preferred the appeals.

4. Learned SDR submits that the individual partners of the partnership firm are separate legal entities who are different from the partnership firm. Merely because the partnership firm has been imposed a penalty it does not mean that no penalty can be imposed on the partners of the partnership firm. In support of this proposition, he relies on the decision of the Tribunal in the case of Sushant Agarwal vs. Commissioner of Customs (Port), Kolkata reported in 2006 (202) ELT 700. He further submits that these two partners are deeply involved in the clandestine activities and the same has been proved by their admission statements and other evidences collected from the suppliers. Therefore, they are liable to imposition of penalties. He also relies on the decision of the Tribunal in the case of Vishan Shamlal Milwani CCE, Aurangabad reported in 2006 (202) ELT 90 wherein when the partners were involved in a serious violation, separate penalties on the partners have been sustained in addition the penalty on the partnership firm.

5. Learned Advocate strongly supports the order of the Commissioner (Appeals). Drawing my attention to the proviso to section 11A(2), he submits that the proceedings initiated by the show cause notice stands concluded not only in respect of the partnership firm, but also in respect of the partners.

6. I have carefully considered the submissions made from both sides and perused the records. The relevant portion of the Section 11A (2) alongwith proviso reads as under:

"(2) The [Central Excise Officer] shall, after considering the representation, if any, made by the person on whom notice is served under sub-section (1), determine the amount of duty of excise due from such person (not being in excess of the amount specified in the notice) and thereupon such person shall pay the amount so determined.

***Provided** that if such person has paid the duty in full together with, interest and penalty under sub-section (1A), the proceedings in respect of such person and other persons to whom notice are served under sub-section (1) shall, without prejudice to the provisions of section 9, 9A and 9AA, be deemed to be conclusive as to the matters stated therein :*

***Provided** further that, if such person has paid duty in part, interest and penalty under sub-section (1A), the Central Excise Officers, shall determine the amount of duty or interest not being in excess of the amount partly due from such person."*

7. The Section 11A provides for issue of show cause notice for demanding duty short-levied, short paid etc. Naturally show cause notice has to be issued to person who is liable to pay central excise duty. In the present case, the duty was liable to be paid by the partnership concern. The show cause notice in so far as the same relates to demand of duty under Section 11A is accordingly directed against the partnership firm. In relation to the demand of duty so proposed, the specific roles of the partners have also been mentioned in the show cause notice and penal action was proposed under Rule 26 of Central Excise Rules, 2002.

8. The original authority accepting the payment of duty, interest and 25% of duty demanded as penalty has closed the proceedings against the assessee, namely, the partnership firm. The proviso to Section 11A (2) specifically provides that "*the*

proceedings in respect of such person and <u>other persons</u> to whom notice are served under sub-section (1) shall be deemed to be conclusive as to the matters stated therein" (emphasis supplied).

9. In the present case, the partnership firm was the "person" from whom the duty demand was proposed and <u>other persons</u> were asked to show cause why the penalties should not be imposed on them. Since the provision is very clear that the proceedings in respect of all the noticees shall be closed, there was no justification on the part of the original authority for imposition of penalties on the partners. The proceedings for imposition of penalties under Rule 26 of the Central Excise Rules, 2002, are integrally connected to short levy and short payment of duty which was being demanded under Section 11A.

10. Therefore, the Commissioner (Appeals) was right in holding that no penalties were imposable on the respondents. As this issue is being decided on the basis of specific provision in Section 11A(2), the case laws relied upon by the learned SDR are not relevant to the facts of the present case.

11. No valid reasons have been adduced to interfere with the order of the Commissioner (Appeals).

13. The appeals are therefore rejected. The cross objections are also disposed of.

(Pronounced in the open court)

(M.VEERAIYAN)
MEMBER (TECHNICAL)

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