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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/1189 & 1198 /2009 AND E / 1190 & 1199 / 2009 -SM[BR]   Date **21/01/2011**

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

To :
C.C.E. KANPUR
117/7, SARVODAYA NAGAR, KANPUR 208005.

C.C.E. KANPUR Appellant

Vs

M/S P.P. POLYPLAST (P) LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No**.63 – 66 / 2011 - **SM[BR]** dated 30.12.2010 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
M/S P.P. POLYPLAST (P) LTD.
84/60, ANWARGANJ, KANPUR.

[2] SHRI DHRUV RUIA, DIRECTOR
M/S P.P.POLYPLAST [P] LTD. 84/ 60, ANWARGANG KANPUR.
[3] SHRI DHRUV RUIA, DIRECTOR
M/S P.P.POLPLAST [P] LTD. 84/60, ANWARGANJ KAN PUR.
[4] SHRI DHRUV RUIA, DIRECTOR
M/S P.P. POLYPLAST [P] LTD. 84/60,
ANWARGANJ, KANPUR.

2. Adv. / Consult
NONE:-------------

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)

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

Appeal No.E/1189 & E/1198/09-SM

Appeal No. E/1190 & E/1199/09-SM
(Arising out of Order-in-Appeal No.32-33-CE/APPL/KNP/2009 and No.27-28-CE/APPL/KNP/2009 dt. 10.02.09 passed by the CCE (A), Kanpur)

Date of Hearing: 30.12.2010
Date of Decision: 30.12.2010

For approval and signature:
Hon'ble Mr.Rakesh Kumar, 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?	
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?	

CCE, Kanpur — Appellant
Vs.

M/s.P.P.Polyplast (P) Ltd. — Respondent
Shri Dhruv Ruia, Director of M/s.P.P.Polyplast (P) Ltd.

Present for the Appellant: Shri S.K.Bhaskar, SDR
Present for the Respondent: Shri None

Coram: Hon'ble Mr.Rakesh Kumar, Member (Technical)

Final **ORDER NO.** 63 – 66/2011 SM (BR)

PER: RAKESH KUMAR

1. The facts giving rise to these appeals are, in brief, as under:-

1.1 The respondent are manufacturer of HDPE laminated fabric chargeable to Central Excise duty. On receipt of the intelligence, that they are indulging in the evasion of Central Excise duty by way of suppressing production of finished goods and removing them clandestinely from their factory premises without payment of duty. Their factory premises was visited by the central excise officers on 04.08.2006 and the stock of finished goods was checked the shortage of 9681.900 Kgs of the finished products -HDPE laminated fabric was found. Their factory was visited again on 13.04.07 when shortage of 8885.000 Kgs of HDPE laminated fabric was found. On both the occasions, the respondent accepted the shortage and Shri Dhruv Ruia, Director of the firm, in his statement accepting the shortage stated that the goods found short had been removed without payment of duty and agreed to deposit the duty which was deposited. The duty involved on the shortage detected was Rs.1,03,242/- and Rs.1,08,106/- respectively. Subsequently the show cause notices were issued for confirming duty demand and also imposition of penalty under Section 11AC read with Rule 25 on the respondent company as well as on the Director under Rule 26. Both the show cause notices were adjudicated by the Assistant Commissioner by two respective orders by which the duty demands were confirmed alongwith interest and penalty of equal amount was imposed on the respondent company and penalty of Rs.10,000/- each was imposed on the director under Rule 26. On appeal to the Commissioner (Appeals), the Commissioner (Appeals) vide the impugned orders-in-appeal No.27-28-CE/APPL/KNP/2009 and No.32-33-CE/APPL/KNP/2009 dt. 10.02.09, while upholding the duty demand set aside the penalty on the respondent firm and as well as on the director on the ground that the duty was paid prior to the issue of show cause notices and also on the ground that just because the shortage was detected, it could not be alleged that there was clandestine removal. Against these orders of the Commissioner

(Appeals), the department has come up in appeal and filed these four appeals.

2. None appeared for the respondent and vide their letter dated 20.11.2010, they have requested the decision on merits.

3. Heard Shri S.K.Bhaskar, learned SDR, who pleaded that the respondent's factory was visited twice and on each occasion there was huge shortage of HDPE laminated fabric, that the respondent's director also stated that the goods found short has been cleared clandestinely without payment of duty; that in view of such huge unexplained shortage, that too on two occasions and admission by the director of the respondent firm that the goods had been cleared clandestinely without payment of duty, the observation of the Commissioner (Appeals) that there was no evidence of clandestine removal and setting aside the penalty on the respondent and as well as on the director of the firm is not correct.

4. I have carefully considered the submissions of the learned SDR and have gone through the letter of the respondent. The shortage of the finished excisable goods is not disputed which on both occasions was substantial on 4.8.06, the shortage of 9681.900 Kgs of the finished products was found and on the second visit i.e. on 13.4.2007, the shortage of 8885.000 Kgs - HDPE laminated fabric was found. On both the occasions, the director of the respondent firm, Shri Dhruv Ruia not only accepted the shortage but also admitted that the goods have been cleared clandestinely without payment of duty. When the shortage of huge quantity was detected on both the occasions, and on both the occasions the respondent accepted the shortage

and stated that the same is on account of clearance of the goods without payment of duty, the setting aside the penalty imposed on the respondent company as well as director of the firm by observing that there was no corroborative evidence of clandestine removal is not correct. Moreover, just because of the duty had been paid prior to the issue of show cause notices, it would not save the respondent from imposition of penalty as the Hon'ble Punjab & Haryana High Court in the case of CCE vs. Machino Montell reported in 2006 (4) STR 177 (P&H) and Hon'ble Supreme Court in the case of Union of India vs. Rajasthan Spinning & Weaving Mills Ltd reported in 2009 (238) ELT 3 (SC) has held that when elements for imposition of penalty in terms of Section 11AC are present, the penalty under this section equal to duty demand confirmed has to be imposed and there is no discretion left with the adjudicating authority to impose less penalty, ~~as~~ and it is not material that the duty had been paid prior to the issue of the show cause notice. Since the director of the respondent's firm has accepted the clearance of the goods without payment of duty, the penalty imposed on him under Rule 26 is justified. In view of the above, the impugned order setting aside the penalty on the respondent company as well as on the director of the company is incorrect and the same is set aside. The order of the original authority imposing penalty is restored. The Revenue's appeals are allowed.

(Pronounced in the open court)

(RAKESH KUMAR)
MEMBER (TECHNICAL)

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