TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

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/515 /2009 – SM[BR] E / CO /19 /2011-SM[BR]** Date **03/08/2011**

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

To :
C.C.E. INDORE
MANIK BAGH PALACE, POST BOX NO. 10, INDORE
452001 (M.P.)

C.C.E. INDORE Appellant

Vs

M/S TARAPUR CABLES (INDIA), Respondent

I am directed to transmit herewith a certified copy of **Final order No. 447 / 2011 –SM[BR]** dated 14.7.2011 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 TARAPUR CABLES (INDIA),
SECTOR-1, BEHIND TATA
CHEMICALS PITHAMPUR (MP)

2. Adv. / Consult
MR.ASAWA ASSOCIATES
445-446, VIKRAM TOWER, 3RD FLOOR, SAPNA SANGEETA ROAD,
INDORE-452001

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New
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. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi -
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

Assistant Registrar
(SM Appeal Branch)

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

Date of Hearing/Decision:14.07.2011

Excise Appeal No. E/515/09-SM&
Excise Cross Objection No.E/CO/19/11-SM

[Arising out of Order-in-Appeal No.IND-I/195/2008 dated 19.11.2008 passed by Commissioner (Appeals), Central Excise, Indore].

CCE, Indore ...Appellant

Vs.

M/s. Tarapur Cables (India) ... Respondent

Present for the Appellant :Shri.Fateh Singh, DR
Present for the Respondent:Shri.Pradeep Asawa, C.A.

Coram: HON'BLE MR. D.N. PANDA, JUDICIAL MEMBER

Final **ORDER NO.** 447/2011 SM(BR) **DATED:**________

PER: D.N.PANDA

Revenue came in appeal being aggrieved by the first appellate order which granted relief to the respondent inspite of unaccounted stock found on 20.1.98. The stock did not appear in accounts. Statement recorded under section 14 of Central Excise Act 1944 resulted in admission of excess stock being unaccounted in the statutory record. This has been clearly recorded by adjudication order. Mistake was admitted by deponent.

1.2 It was also the case for Revenue that as soon as aforesaid detection was made, entry of the impugned goods was made in RG I record. The respondent waived right to plead defence against show cause notice, Rather prayer was for early finalisation of the proceeding. Adjudicating authority held the conduct of the appellant guilt. The appellate authority on the ground that no discrepancy in inputs/raw material stock was found held confiscation bad. He was also of the view that there was no evidence of clandestine removal. On such count, the adjudication order was reversed and penalty imposed was reduced to Rs.2,000/- waiving redemption fine.

2. Ld. DR submits that the appellate order was passed on erroneous premises. To this submission, the ld. AR appearing on behalf of the respondent submits that the appellate authority has passed proper order finding no evidence against respondent nor discrepancy of the input found.

3. Heard both sides and perused the record.

3.1 The evidence recorded under section 14 remained undisputed. That has established conduct of the respondent about maintaining unaccounted stock which was brought to record only upon investigation. Also it was the case of the respondent that it waived service of show cause notice to get rid of the litigation. The respondent's plea was that there was no evidence of input discrepancy. When the respondent miserably failed to explain why unaccounted stock was found in its premises and was being kept unaccounted, such an unaccountal of stock does not call for further investigation into input discrepancy. Possession proves the tainted title. When property over the goods did not find place in the statutory record, the appellant looses right over such goods. Such a view is fortified from the judgement of Hon'ble High Court of Madras in the case of Alagappa Cements Pvt. Ltd. vs. CEGAT, Chennai reported in 2010(260) ELT 511 (Mad.) Hon'ble High Court had expressed its anxiety stating "we fail to understand as to how the appellant is justified in contending that in the absence of positive proof as regards the actual manufacture of cement not brought into accounts, then alone the conclusion of the original authority as well as first respondent can be justified cannot be accepted." The principle laid down by Hon'ble High Court of Madras does not permit any act contrary to law to be sanctioned. Unaccounted stock found during investigation calls for measure to prevent such an evasive practice. Adjudicating authority rightly penalised the appellant and also confiscated the goods with option to redeem the same paying fine of Rs.2.00 Lakhs.

3.2. The respondents states that the duty involvement was Rs.80,000/- and the goods in question having been incorporated into accounts, imposition of redemption fine of Rs.2.00 Lakhs and even penalty of Rs.2.00 Lakhs shall be unreasonable. Considering the duty element involved and the value of goods claimed to be Rs.5,24,715/-, it would be proper to impose redemption fine of Rs.50,000/- in the fitness of the circumstances which is nearly 10% of the value of the goods. So far as penalty is concerned, imposition of penalty of Rs.2,000/- is a meagre amount which an evader can easily afford to pay. The view of appellate authority is devoid of merit to prevent evasive practice. Therefore, imposition of penalty of Rs.10,000/- would be justified to prevent recurrence of evasive practice. Accordingly, the appeal is disposed in favour of Revenue directing imposition of redemption fine of Rs.50,000/- and penalty of Rs.10,000/- on the Assessee.

3.3 Consequently, the first appellate order is set aside with the aforesaid observation and conclusion.

4. In view of the order passed above, the cross objection is dismissed.

[Dictated & Pronounced in the open Court].

(D.N.PANDA)
JUDICIAL MEMBER

Anita