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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/1191 - 1192/2009 – SM [BR]** Date **23/08/2011**

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 QUALITY STEEL PRODUCTS LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.494-495/2011-SM[BR]** dated 2.8.2011 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 QUALITY STEEL PRODUCTS LTD.
133/1, JUHI, GAUSHALA, KANPUR.

2. Adv. / Consult SHRI A.K. DIXIT ADV.
113/145, SWAROOP NAGAR, KANPUR-208002.

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 (Harvana)
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)

2. **SHRI DAVID ROSTAN, AUTH. SIGNATORY**
M/S QUALITY STEEL PRODUCTS LTD., 133/1, JUHI GAUSHALA, KANPUR.

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. IV
Excise Appeal No. 1191 of 2009 (SM)

CCE, Kanpur — Appellant

Versus

M/s Quality Steel Products Ltd. — Respondent

Excise Appeal No. 1192 of 2009 (SM)

CCE, Kanpur — Appellant

Versus

Shri David Rostan, Authorised Signatory]
M/s Quality Steel Products Ltd.] — Respondent

[Arising out of the Order-in-Appeal No. 35-36/CE/APPL/ KNP/2009 dated 10/02/2009 passed by The Commissioner (Appeals), Customs & Central Excise, Kanpur.]

For Approval and signature :
Hon'ble Shri 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 would 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 Department Authorities? :

Appearance

Shri S.K. Bhaskar, Authorized Representative (DR) – for the appellant.

Shri A.K. Dixit, Advocate – for the respondent.

CORAM : **Hon'ble Shri Rakesh Kumar, Member (Technical)**

DATE OF HEARING : 02/08/2011.

Final Order No. 494-495/2011 SM (Br) Dated : _____

Per. Rakesh Kumar :-

The respondents are manufacturers of steel pipes and tubes chargeable to Central Excise Duty. On 06/10/06 at the time of visit of Central Excise officers to their factory, when the stock of finished goods was checked, shortage of the finished goods involving duty of Rs. 58,459/- was detected which was accepted by Shri David Rostan, Authorized Signatory of the respondent. The duty involved on the goods found short was paid. However, subsequently Assistant Commissioner while confirming the duty demand and appropriating duty already paid also imposed penalty of equal

amount on the respondent under Section 11AC and imposed penalty of Rs. 10,000/- on Shri David Rostan. The Commissioner (Appeals) while upholding the duty demand set aside the penalty under Section 11AC on the respondent company and penalty under Rule 26 on Shri David Rostan on the ground that the entire amount of duty had been paid before the issue of show cause notice and merely from the shortage of finished goods, the clandestine removal cannot be inferred. Against this order of the Commissioner (Appeals), the Department has come in appeal challenging the order of Commissioner (Appeals) setting aside the penalty on the respondent company and authorized signatory.

2. Heard both the sides.

2.1 Shri S.K. Bhaskar, the learned Departmental Representative pleaded that the respondents while not disputing the fact of the shortage of finished goods, have not given any explanation for the same, that this conduct of the respondent shows that the shortage of finished goods was due to clandestine removal without payment of duty, that when clandestine removal of finished goods stands proved, the

provision of Section 11AC for penalty on the respondent company and provision of Rule 26 on Authorized Signatory would be attracted, that in this regard he relies upon the judgments of the Tribunal in the case of **CCE, Indore vs. Dewas Metal Section Ltd.** reported in **2004 (167) E.L.T. 52 (Tri. – Del.)** and **Sainsons Paper Industries Ltd. vs. CCE, Delhi – III** reported in **2003 (158) E.L.T. 782 (Tri. – Del.)**. He, therefore, pleaded that the impugned order setting aside the penalties is not correct.

2.2 Shri A.K. Dixit, Advocate, the learned Counsel for the respondent, pleaded that merely from the fact of shortage of finished goods the clandestine removal cannot be inferred, that there was no statement of the of authorized signatory that the goods found had been removed clandestinely, and that he relies upon but judgment of Tribunal in the case of **CCE, Kanpur vs. Latex Chemicals Pvt. Ltd.** reported in **2010 (253) E.L.T. 351 (Tri. – Del.)** and also in the case of **CCE, Kanpur vs. Bee Kay Enterprises** reported in **2010 (253) E.L.T. 334 (Tri. – Del.)**, wherein it was held merely from the shortage of the finished goods, it cannot be concluded that the

same was on account of clandestine removal. He, therefore, pleaded that there is no merit in the Revenue's appeal.

3. I have carefully considered the submissions from both the sides and perused the records.

4. There is no dispute about the fact of shortage of finished goods which was to the tune of 12.9 M.T. involving duty of Rs. 58,459/-. When the shortage has not been disputed and no explanation whatsoever has been given for the same the conclusion would be that the goods found short had been removed clandestinely without payment of duty. In the judgment in case of **CCE, Kanpur vs. Bee Kay Enterprises** (supra) cited by the respondent, the fact of shortage itself was in doubt and similarly the facts of the case in the case of **CCE, Kanpur vs. Latex Chemicals Pvt. Ltd.** (supra) by respondent are also different. As held by Hon'ble Supreme Court in the case of **Union of India vs. Rajasthan Spinning & Weaving Mills** reported in **2009 (238) E.L.T. 3 (S.C.)**, once the elements for imposition of penalty under Section 11AC are present, the same has to be imposed irrespective of whether the duty non-paid or short paid duty has been paid

before the issue of show cause notice. In view of this, the Commissioner (Appeals)'s order for setting aside the penalty is not correct and the same is set aside and the original Adjudicating Authority's order imposing penalty on the respondent under Section 11AC is restored. However, since in this case, the entire duty demand had been paid before the issue of show cause notice and still in the adjudication order no option to avail of the lower penalty under 1st and 2nd proviso to Section 11AC had been given by the Adjudicating Authority, in accordance with the judgment of Hon'ble Delhi High Court in the case of **K.P. Pouches (P) Ltd. vs. Union of India** reported in **2008 (228) E.L.T. 31 (Del.)**, the benefit of reduced penalty under 1st and 2nd proviso to Section 11AC cannot be denied. Accordingly, the penalty under Section 11AC is reduced to the 25% of the duty demand.

5. As regards the penalty on Shri David Rostan, the Authorized Signatory, under Rule 26, since he was aware of the clandestine removal of the finished goods cleared without payment of duty, the same has been rightly imposed and as such Commissioner (Appeals)'s order setting aside the penalty on him under Rule 26 is not correct. The same is set

aside and in this regard the original Adjudicating Authority's order imposing penalty on Shri David Rostan is restored.

6. The Revenue's appeals are accordingly allowed.

(Dictated and pronounced in open court.)

(Rakesh Kumar)
Member (Technical)

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