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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/71 /2011 – SM[BR] E / STAY / 90 / 2011-SM[BR] **Date 30/08/2011**

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

To :
M/S KUNAL BROS PVT. LTD.
C-25, SECTOR-57, NOIDA.

M/S KUNAL BROS PVT. LTD., Appellant

Vs

C.C.E. NOIDA Respondent

I am directed to transmit herewith a certified copy of **Final order No. 528/2011-SM[BR]&S/465/2011** dated 12.8.2011 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
C.C.E. NOIDA
C-56/42, SECTOR-62,
NOIDA-201307

2. Adv. / Consult
MR.S.D.GAUR
SB-108, SHASTRI NAGAR, GHAZIABAD.

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

Excise Stay Application No. E/S/90/11-SM in
Excise Appeal No.E/71/11-SM

[Arising out of Order-in-Appeal No.322-323-CE/APPL/ Noida/ 2010 dated 27.10.2010 passed by the Commissioner (Appeals), Noida)].

M/s. Kunal Bros. Pvt. Ltd. ...Appellant

Vs.

CCE, NOIDA ... Respondent

Present for the Appellant : Shri S.D. Gaur, Consultant
Present for the Respondent: Shri.S.K. Bhaskar, D.R.

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

Date of Hearing/Decision:12.08.2011

Final

ORDER NO. 528/2011 SM(BR) + S-415/2011 SM(BR) **DATED:**

PER: D.N.PANDA

When the appellant failed to produce relevant evidence relating to transport of the goods sought to have been supplied by KPIPL and deposition recorded by Shri Naresh Guleria, Director of the said concern on 26.05.06 revealed that they have not been supplied any material to any of their dealers since they were not manufacturing PVC Compound and Master Batches' in their factory, the appellant faced the penalty of

Rs.73,440/-. No evidence came to record before both the authorities below.

2. Ld. AR moving the stay application submits that the transactions were bonafide and Shri J.K.Chug deposed that goods were received in the factory and used in manufacture. Therefore, waiving pre-deposit appeal may also be allowed.

3. Ld. DR supports orders of the authority below.

4. Heard both sides and perused the record.

5. The demand being of very small and that is Rs.73,440/- there is no need to keep the appeal pending. Therefore, the first appellate order was examined thoroughly. The concurrent finding of both authorities below was that when the supplier of the goods had admitted that no goods of the description claimed by the appellant were supplied by them, since they were not manufacturer of such goods, the appellant has no cogent evidence to rebut that. In absence of evidence to rebut the deposition of Shri Naresh Guleria and in absence of evidence showing transportation, the appeal fails. Therefore, both stay application and appeal are disposed.

[Dictated & Pronounced in the open Court].

(D.N.PANDA)
JUDICIAL MEMBER

Anita