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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/1853/2009 – SM[BR] &E/ ROA / 93 / 2011-SM[BR] **Date 29/11/2011**

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

To :
M/S R.G.PIGMENTS PVT.LTD
KHASRA NO 99, VILLAGE- UMMEDPURA, DISTT-KOTA

M/S R.G.PIGMENTS PVT.LTD Appellant

Vs

C.C.E. JAIPUR I Respondent

I am directed to transmit herewith a certified copy of **Final order No.816/2011-SM[BR]&M/206/2011** dated 11.11.2011 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. JAIPUR I
N.C.R.BUILDING, STATUE
CIRCLE, "C" SCHEME, JAIPUR
302005.

2. Adv. / Consult **SHRI VIJAI KUMAR ADV.**
C-2/2329, VASANT KUNJ NEW DELHI-70.

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. 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)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. III

Excise Appeal No. 1853 of 2009 SM
Excise Restoration of Appeal Application No. 93 of 2011 SM

[Arising out of Order-in-Appeal No. 53-54(DK)/CE/JPR-I/2009 dated 9.3.2009 passed by the Commissioner of Customs & Central Excise (Appeals), Jaipur]

For approval and signature:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)

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1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? : No

2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : No

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

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M/s. R.G. Pigments Pvt. Ltd. — Appellants

Vs.

Commissioner of Central Excise
Jaipur I — Respondent

Appearance:

Shri Vijay Kumar, Advocate for the Appellants
Shri Fateh Singh, DR for the Respondent

Date of Hearing/decision : 11.11.2011

final **ORAL ORDER NO.** 816 / 2011 SM(BR) & M-206/2011 SM (BR)

Per Archna Wadhwa (for the Bench):

The application is for restoration of the appeal dismissed vide Final Order No. 373/11 SM dated 2.6.11 by observing that the notice of hearing sent to the appellant stands returned by postal authorities. In view of the above, I recall the order and restore the appeal to its original number.

2. Inasmuch as the short issue is involved, the appeal itself is being taken up for final disposal.

3. The appellants are engaged in the manufacture of Lead Oxide. Their factory was visited by the officers on 4.10.06, who conducted various checks and verifications. As a result, shortage of final product to the extent of 3 MT involving duty of Rs.34,272/- was demanded. The director of the company, in his on the spot statement, admitted the said shortages and deposed that their labourer have cleared the same in their absence. They accordingly, agreed to deposit the above amount which was deposited on 6.10.2006.

4. In the above background, proceedings were initiated against the appellants culminating into an order confirming demand of duty of Rs.34,272/- and imposing penalty of identical amount under Section 11AC by the original adjudicating authority. The order passed by the

Assistant Commissioner was upheld by Commissioner (Appeals). Hence, the present appeal.

5. Learned Advocate appearing for the appellant submits that he is not disputing the confirmation of demand of duty as also imposition of penalty under Section 11AC. He however, submits that no option stands given by the authorities below for depositing the entire dues within a period of 30 days from passing of the said order in which the penalty would have been reduced to 25% in terms of proviso to section 11AC. He submits that the law stands settled laying down that where no option has been given by the authorities below, the same can be extended to the appellants by the higher appellate forum. Accordingly, he prays for reducing the penalty to 25%.

6. After hearing the learned DR, I find that issue is no more res integra. Tribuna, in the case of CCE Vadodara vs. Swati Chemicals Indus. Ltd. as reported in [2009 (248) ELT 421 (Tri-Ahmd)] as also the judgement of Hon'ble Gujarat High Court in the case of Harish Silk Mills as reported in [2010 (255) ELT 393 (Guj)] has held that where no option has been given by the authorities below, the said option can be extended by the higher appellate forum. As such, while upholding the imposition of penalty to the extent of 100%, in terms of law declared by the Hon'ble Supreme Court in the case of Dharmendra Textile Processors [2008 (231) ELT 3 (SC)], I extend the option to the appellants directing them to deposit the entire dues

along with 25% of penalty within a period of 30 days from passing of the order, in which case penalty shall stand reduced to 25% of the duty amount.

7. ROA application as also appeal stands disposed of in the above manner.

(Pronounced in the open Court)

(Archana Wadhwa)
Member(Judicial)

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