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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/1802 - 1803/2011 – SM[BR] &E /STAY/ 2381- 2382 / 2011-SM[BR] Date 14/12/2011

Assistant Registrar
C.E.S.T.A.T, New Delhi
To :
1. **R.G. PIGMENTS PVT. LTD.**
2. **RAMESH KUMAR AGRAWAL, (DIRECTOR)**
FLAT NO. 403-404, PLOT NO. 122, SHAKTI NAGAR,
KOTA (RAJASTHAN)
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.871-872/2011-SM[BR]&S/838-839/2011** dated 30.11.2011 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
MR.VIJAI KUMAR,ADVOCATE
C-2/2329, VASANT KUNJ, N DELHI.110070

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)

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

COURT NO. II

E/Stay Nos. 2381-2382/2011 in
Central Excise Appeal Nos. 1802-03/2011-SM

[Arising out of Order-in-Appeal No. 116(DKV)CE/JPR-I/2011 dated 24.3.2011 passed by the Commissioner (Appeals-I), Customs & Central Excise, Jaipur]

Date of Hearing: 30th November, 2011

For approval and signature:

Hon'ble Shri D.N. Panda, Judicial Member

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?	

M/s. R.G. Pigments P. Ltd.,
Shri Rakesh Kumar Agarwal, Director — Appellant

Vs.

CCE, Jaipur — Respondent

Present for the Appellant : Shri Vijay Kumar, Advocate
Present for the Respondent : Shri R.K.Verma, DR

Coram: Hon'ble Shri D.N. Panda, Judicial Member

FINAL ORDER NO. 871 - 872/2011 SM(BR) &
S - 838 - 839/2011 SM (BR)

Per D.N. Panda:

Learned Counsel submits that 8250 kgs. of Lead Oxide came from M/s. Mittal Pigments Pvt. Ltd. in October, 2009 for processing and delivery to the same concern. Receipt of the goods from the employer is not only evident from record but also delivery of goods to the employer i.e. Mittal Pigments Pvt. Ltd. is also substantiated by evidence. Finished goods have gone out of factory of the appellant on 28.4.2010. Investigation was completed on 31.12.2009. Pleading before the authorities below was made since the documents are borne by record. Once the raw material receipt is verified by investigating authority the said authority should have examined the delivery of the finished goods by the appellant. But they failed to do so. It is also pertinent to note that no duty was demanded by the authorities for the allegation. There was demand of redemption fine of Rs. 50,000/- and penalty of Rs. 20,000/-. So also there was penalty of Rs. 20,000/- on the Director of the company who is in appeal No. 1803/11 while main concern i.e. R.G. Pigments Pvt. Ltd. is in appeal No. 1802/11. In view of failure of the authority to appreciate the factual evidence, pleading and also the law, orders of the authorities below are not sustainable. Therefore, not only pre-deposit may be dispensed with but appeal may also be disposed.

2. Learned D.R. on the other hand opposes the submission of the learned Counsel.

3. Heard both sides and perused the record.

4.When the pleading of the appellant was ignored as is pointed out to have been made and is apparent from Para 4.2

of Adjudication Order there is gross violation of principle of natural justice and also grave error of law committed by the authorities below. To appreciate the pleading learned Counsel reiterates that following portion of para 4.2 of the adjudication order comes to rescue of the appellants:-

"The fact is also evident from the copy of challan No. 6 dtd. 05.10.2009 [supra] that notice received 19500 kgs. of re-melted lead igots out of which 8250 kgs. of lead oxide [seized and released], 9890 kgs. of refined lead and 1360 kgs. of waste was returned to the principal manufacturer. (8) In view of above facts, circumstances and legal position, it may be observed that the allegation that notice manufactured 8250 kgs. of lead oxide with a intent to clear it clandestinely without payment of duty is wrong, baseless and unfounded, therefore, it is requested the show cause notice may be withdrawn."

4. It may be stated that in view of aforesaid pleadings of appellant merely disposing the stay application, appeal need not be kept pending in Tribunal since main grievance of the appellant was not redressed by the authority. When an essential evidence is not considered, the impugned order has no legs to stand.

5. Learned Counsel says demands have been discharged under protest. In view of the finding recorded above, stay applications have become infractuous and appeal is remanded back to the Adjudicating Authority to consider evidence of

Job

return of finished goods after the work was done and Authority to deal with pleading of the appellants in the light of the above observations, granting fair opportunity of hearing. A reasoned and speaking order be passed dealing with aforesaid specific pleading of return of goods. While doing so, it is also necessary to examine whether the job worked goods suffered duty in the hands of employer.

6. Since appeal of the main appellant i.e. R.G. Pigments Pvt. Ltd. is remanded, the other appeal filed by the Director in appeal No. 1803/2011 is also remanded for fresh adjudication

(Pronounced in the open Court)

(D.N.PANDA)
JUDICIAL MEMBER

RK