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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/226 - 227 /2009 – SM [BR] **Date 19/12/2011**

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 RHL PROFILES LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No. 877 -878 / 2011-SM[BR]** 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
[1] M/S RHL PROFILES LTD.
[2] SHRI. S.S. TRIVEDI , AUTHORISED SIGNATORY OF MAGARWARA, UNNAO.

2. Adv. / Consult **SHRI K.K.ANAND ADV.**
A-5, BASMENT LAJPAT NAGAR-III,
NEW DELHI-24.

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)

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

COURT NO. II

Central Excise appeal No. 226-227/2009-SM

[Arising out of Order-in-Appeal No. 375-376-CE/APPL/KNP/2008 dated 20.10.2008 passed by the Commissioner (Appeals), Customs & Central Excise, Kanpur].

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?	

CCE, Kanpur — Appellant

Vs.

M/s. RHL Profiles Ltd., — Respondent

Present for the Appellant : Shri Fateh Singh, D.R.
Present for the Respondent : Shri Saurabh Yadav, Advocate

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

FINAL ORDER NO. 877-878/2011 SM (BR)

Per D.N. Panda:

Revenue's appeal is without stating any ground in page 8 of the appeal memorandum, except merely repeating facts. Rule 8 of CESTAT (Procedure) Rules, 1982 has mandate that every memorandum of appeal shall state concisely and under distinct heads grounds of appeal and such grounds shall be numbered and shall be typed in double space. Reading of the rule calls for examination of grounds of appeal of the Revenue to find out whether the grounds have been set out concisely. Learned Commissioner (Appeals) has categorically found at page 4 of the impugned order that no corroborative evidence is available on record with regard to customer to whom alleged goods were sold. Similarly he brought out documents relating to sale transaction, mode of transportation used, and particulars of payment absent. He proceeded to grant relief on the ground that suspicion shall not be a ground to make an allegation of clandestine clearance which is not a substitute of proof. He also brought to record at page 5 of the impugned order that burden of proof was not discharged by Revenue. When on all these counts learned Commissioner (Appeals) granted relief there should have been specific ground against these findings in the appeal of Revenue. Of course, Revenue would have been rescued following the decision of Hon'ble High Court of Madras in the case of Alagappa Cement Pvt. Ltd. vs. CEGAT, Chennai – 2010 (260) ELT 511 (Madras) but when Revenue fails to discharge its burden of review it fails again. Had Revenue discharged the burden of proof they would have been benefited by this judgement. Since their appeal is handicapped technically by Rule 8 of CESTAT

(Procedure) Rules, 1982 and substantial by Rule of Evidenc that fails. Accordingly, Revenue's appeal is dismissed.

(Pronounced in the open Court)

(D.N.PANDA)
JUDICIAL MEMBER

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