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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/992 /2008 – SM[BR]   Date 15/04/2010

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 S.S. POLYFILMS PVT. LTD.   Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 439 / 2010-SM[BR] dated 8.4.2010 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 S.S. POLYFILMS PVT. LTD.
45, UPTRON ESTATE,PANKI, KANPUR
2. Adv. / Consult
MR.RAJESH CHHIBBER
FA/9, NEW KAVI NAGAR, GHAZIABAD
3 S.D.R
~~4 J.C.D.R.~~
5 Bar association, CESTAT, New Delhi
6 Director Publications, Customs, Excise, I.P. Estate, New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
~~9 Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.~~
~~10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)~~
11 M/s. Deeparchie Publications, M-93, Marg, 46, Saket, New Delhi 110017
~~12 Taxindiaonline.com Pvt.Ltd. B-XI/8183,Vasant Kunj, New Delhi - 110070~~
13 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15 LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
16 Office Copy
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Assistant Registrar
(SM Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-III

Date of hearing/decision: 8.4.2010

Central Excise Appeal No.992 of 2008-SM

Arising out of the order in appeal No.43-CE/APPL/KNP/2008 dated 21.2.2008 passed by the Commissioner(Appeals), Customs & Central Excise, Kanpur.

For Approval and Signature:

Hon'ble Shri M. Veeraiyan, Technical Member

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	Yes
2	Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
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

C.C.& C.E., Kanpur ... Appellant

Vs.

M/s S.S.Polyfilms (P) Ltd. ... Respondent

Appearance:

Shri R.K. Saini , Authorized Departmental Representative (JDR) for the Revenue and Shri Rajesh Chhibber, Advocate for the respondent

Coram: Hon'ble Shri M. Veeraiyan, Member (Technical)

Oral Order No. 439/2010 SM (BR)

Per M. Veeraiyan:

This is an appeal by the Department against the order of the Commissioner (Appeals) in upholding the order of the original authority in not imposing the penalty under Section 11AC read with Rule 15 of Cenvat Credit Rules, 2004.

2. Heard both sides.

3. The relevant facts, in brief, are that on 18.5.2006 when the Central Excise officers visited the factory premises and conducted stock verification, they found shortage of 16,120 kgs. of raw materials namely, LLDPE on which

the cenvat credit was availed by the respondent. Cenvat credit involved amounted to Rs.1,55,874/-. The authorised signatory of the respondent firm Shri Ramesh Chandra Pandey admitted in his statement dated 18.5.2006 given under Section 14 of the Central Excise Act, 1944 that the short found inputs were cleared from the factory premises by the factory staff in his absence without cover of any invoice. The said statement has not been retracted. On the other hand, the same was acted upon and the entire duty involved stands paid after a few days on 22.5.2006. The original authority did not impose penalty on the ground that there was no corroborative evidence about clandestine removal. The said finding of the original authority stands upheld by the Commissioner (Appeals).

4. Learned Advocate DR submits that it is a case of admitted clandestine removal of inputs on which Cenvat credit has been taken. Therefore, the penalty is warranted under Rule 15 of the Cenvat Credit Rules read with Section 11AC of the Central Excise Act.

5. Learned Advocate for the respondent submits that the duty stands paid prior to issue of show cause notice, therefore, he seeks the benefit of the decision of the Hon'ble Delhi High Court in the case of K.P. Pouches (P) Ltd. vs. UOI reported in 2008 (228) ELT 31.

6.1. I have carefully considered the submissions from both sides and perused the records. In the present case, the input on which credit taken was found to be short at the time of visit by the officers. The authorised signatory admitted the shortage and explained the reason for shortage as removal by the staff without preparing any invoices and without reversing the Cenvat credit. Undisputedly, the said statement has not been retracted. In fact, the said statement has been acted upon by making payment of the credit involved on the admitted clandestinely removal inputs. Under these circumstances, the question of further corroboration does not arise. After all, it is settled principles of law that what is admitted need not be proved. The investing officer is not expected and required to ~~then~~ waste time and energy for proving the admitted facts. Therefore, the original authority and Commissioner (Appeals) were not justified in not imposing the penalty under

Section 15 of the Cenvat Credit Rules read with Section 11AC of the Central Excise Act.

6.2 However, the submission of the learned Advocate that in the event of imposition of penalty under Rule 15 of Cenvat Credit Rules read with Section 11AC , the benefit of reduced penalty in terms of the proviso to Section 11AC should be extended in the light of the ratio of the decision of the Hon'ble Delhi High Court in the case of K.P. Pouches (P) Ltd. deserves to be accepted.

7. In view of the above, the appeal of the Department is allowed. The duty demand is confirmed as uncontested before the original authority and the Commissioner (Appeals). A sum of Rs.1,55,874/- is imposed as penalty under Rule 15 of Cenvat Credit Rules read with Section 11AC. The respondent is , however, permitted to pay an amount of Rs.38,968.50 (rupees thirty eight thousand nine hundred sixty eight and paise fifty only) as penalty in terms of proviso to Section 11AC if they deposit the said amount within 30 days from today. In case of failure to deposit the same within 30 days, the penalty payable shall be Rs.1,55,874/-.

8. Appeal is disposed off , as above.

(M. Veeraiyan)
Member (Technical)

scd/