

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/1415/2008 – SM[BR] WITH E/ CO / 348 / 2008 –SM[BR]

Date 11/05/2010

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
Respondent

M/S KUMAR ROTOFLEX PVT. LTD.

I am directed to transmit herewith a certified copy of **Final order No. 496 / 2010 –SM[BR]** dated 4.5.2010 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 KUMAR ROTOFLEX PVT. LTD.

15-E, PANKI INDL. AREA, SITE-I, KANPUR. (U.P.)

2. Adv. / Consult SHRI INDER KR. JAIN REPR.

M/S RASPDNDENT;-----

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 Publications Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3

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12 LAWCRUX Advisors Pvt Ltd, LAW House.1-8.Sector - 10. Faridabad 121003 (Harvana)

13 Office Copy

14 Guard file

15 TAXINDAONLINE. COM PVT. LTD. UNIT NO. 1, 2ND FLOOR, VASANT ARCADE,
NALSON MANDELA ROAD, VASANT KUNJ NEW DELHI-70

Assistant Registrar
(SM Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

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

COURT-III

SINGLE MEMBER BENCH

Date of hearing/decision:4.5.2010

Central Excise Appeal No.1415 of 2008 –SM with Cross-Objection No.348 of 2008-SM

Arising out of the order in appeal No.139-CE/APPL/KNP/2008 dated 31.3.2008 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.Ex., Kanpur

....

Appellant

Vs.

M/s Kumar Rotoflex (P) Ltd.

....

Respondent

Appearance:

Shri R.K. Saini, Authorised Departmental Representative (JDR) for the Revenue and Shri Inder Kr. Jain, Representative for the respondent

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

Final Oral Order No. 496/2010-SM(BR)

Per M. Veeraiyan:

Appeal No.E/1415/08 is against the order of the Commissioner (Appeals) No. 139-CE/APPL/KNP/2008 dated 31.3.2008. Cross-Objection No.E/348/08 is connected to this appeal.

2. Heard both sides.

3. The relevant facts, in brief, are that the officers visited the factory premises of the appellant on 22.2.2006 and found shortage of inputs on

which credit was taken. The value of the short found goods was Rs.12,24,803/- involving duty amount of Rs.1,99,888/-. The authorised signatory Shri Mahesh Tiwari in whose presence the stock taking was undertaken admitted the shortage and submitted that he was not in a position explain the reason for shortage and agreed to deposit the duty involved on the said shortage. The duty involved stands deposited by debiting in PLA on 28.2.2006. The original authority in pursuance of the show cause notice dated 16.5.06 confirmed the demand of duty and imposed equal amount as penalty under Section 11AC, Rule 25 of Central Excise Rules, 2002 and also under Rule 15 of Cenvat Credit Rules, 2004. The Commissioner (Appeals) confirmed the demand of duty, however, set aside the penalties imposed above. The Department is challenging the order of the Commissioner (Appeals) in setting aside the penalty. The party has filed cross-objection merely in support of the order of the Commissioner (Appeals).

4. Learned DR reiterates the grounds of appeal.

5. Learned Representative of the respondent strongly supports the order of the Commissioner (Appeals). He submits that the visiting officers have failed to notice the inputs issued for processing in the vessels.

6. I have carefully considered the submissions from both sides and perused the records. The shortage of substantial quantity of raw material on which credit was taken stands admitted and credit involved stands reversed after six to seven days from the date of visit of the officers. The statement of authorised signatory is not retracted. Therefore, the original authority has confirmed the demand which stands upheld by the Commissioner (Appeals). The prayer in the cross-objection is only for upholding the order of the Commissioner (Appeals). In other words, there is no dispute relating to liability to duty on the short found goods before me.

7. The dispute relates to whether penalties are warranted on the respondent company. The original authority has imposed separate penalties of Rs.1,99,888/- each under Section 11AC, Rule 25 of Central Excise Rules, 2002 and under Rule 15 of Cenvat Credit Rules, 2004. The Commissioner

(Appeals) has set aside these penalties on the ground that the disputed duty stands paid before issue of show cause notice. No evidence on removal of the short found goods have been relied upon. The authorised signatory of the respondent merely admitted the shortage and there was no admission about any clandestine removal. In their reply dated 13.6.2006, the respondent claimed that the officers did not consider the stock lying in vessel under process. This claim is clearly a belated claim. However, there is no positive evidence to substantiate that there was clandestine removal. Therefore, the question of invoking the provisions of Section 11AC may not arise. As regards the Rule 25 of Central Excise Rules, 2002, the same primarily relates to excisable goods manufactured by an assessee. In the present case, the issue relates to shortage of inputs on which credit has been taken.

8. However, it is a clear case of inputs received by the respondent on which credit has been taken was found short and there was no satisfactory explanation forthcoming about the disposal of the short found goods. The variation in the stock of inputs on the date of visit was as follows:-

S. No	Description of goods	Stock as should have been (in kgs.)	Stock physically verified on 22.2.06 (in kgs.)	Difference (in kgs.)	Assessable value (in kgs.)
1.	Aluminium Paste	500	50	(-) 450	67388
2.	Cyclohexanone	1320	190	(-) 1130	72320
3.	Pure terephthalic Acid	7900	800	(-) 7100	311690
4.	Dimer Acid	3800	380	(-) 3420	232560
5.	Ethylene Diamine	1350	90	(-) 1260	134820
6.	Penterythritol	4075	300	(-) 3775	245375
7.	Rosin	3400	Nil	(-) 3400	160650
8.					1224803

Perusal of the above table indicates that in the case of pure terephthalic acid as against the stock of 7900 kgs. as per the books of accounts, the physical stock available was only 800 kgs. Similar is the variation in respect of other inputs. Such a wide variation was not explained on the date of visit. It was also not explained immediately thereafter. Therefore, the respondents are liable to penalty under Rule 15 of Cenvat Credit Rules, 2004.

9. Therefore, while there is justification to impose penalty under Rule 15 of Cenvat Credit Rules, 2004, there is no justification for imposition of penalty under Rule 25 of Central Excise Rules, 2002 and Section 11AC of Central Excise Act, 1944.

10. In view of the above, the order of the Commissioner (Appeals) in so far as the same relates to setting aside the penalty under Rule 15 of Cenvat Credit Rules 2004, on the ground that the duty stands paid before issue of show cause notice is set aside. The order of the original authority in so far as imposition of penalty under Rule 15 of Cenvat Credit Rules, 2004 is restored. While restoring the order of the original authority, the penalty imposed under Rule 15 of Cenvat Credit Rules, 2004 is reduced from Rs.1,99,888/- to Rs.50,000/- (rupees fifty thousand only).

11. The appeal of the Department is partly allowed by restoring the penalty to the extent of Rs.50,000/- under Rule 15 of Cenvat Credit Rules, 2004. Cross-Objection is also disposed of.

(M. Veeraiyan)
Technical Member

scd/