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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/1143/2009 – SM[BR] Date 14/12/2010

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

To :
M/S JPS PLASTICS PVT. LTD.
SARAI ROAD, BARAUT, BAGHPAT.

M/S JPS PLASTICS PVT. LTD. Appellant
Vs
C.C.E. MEERUT I Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1399 / 2010-SM[BR] dated 1.12.2010 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. MEERUT I
   EXCISE CHOWK,OPPOSITE CHOUDHARY CHARAN SINGH UNIVERSITY MANGAL PANDAY NAGAR, MEERUT - 250005.
2. Adv. / Consult
   MR.BIPIN GARG
   B-1/1289,A-VASANT KUNJ, NEW DELHI
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. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
10. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
11. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
12. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
13. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
14. Office Copy
15. 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. 1143 of 2009-SM(BR)

[Arising out of Order-in-Appeal No. 25/CE/MRT-I/2009 dated 25.2.2009 passed by the Commissioner of Central Excise (Appeals), Meerut]

For approval and signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)

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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? : Yes
2. Whether it should be released under Rule 27 of the 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

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M/s. JPS Plastics Pvt. Ltd. — Appellants

Vs.

Commissioner of Central Excise
Meerut — Respondent

Appearance:

Ms. Sukriti Das, Advocate for the Appellants
Shri Anil Khanna, SDR for the Respondent

Date of Hearing /decision: 1.12.2010

final **ORAL ORDER NO. 1399/2010 SM (BR)**

Per M. Veeraiyan:

This is an appeal against the order of the Commissioner (Appeals) No. 25/CE/MRT-I/2009 dated 25.2.09 by which order of the original authority confirming demand of duty and imposition of penalty stands upheld.

2. Heard both sides.

3. The Central Excise officers visited the factory premises of the appellants on 24.1.08 and found substantial shortage of inputs valued about Rs.6 lakhs and finished products valued about Rs. 16 lakhs compared to stocks found accounted in their statutory records. The authorised signatory, initially, could not give any explanation, later on he stated that the shortage found of final products could be due to 'excess loading' and shortage of inputs could be due to 'storage loss'. However, the entire duty involved on short found raw materials and finished goods amounting to Rs.2,80,198/- was paid on 28.1.08. Show cause notice was issued proposing confirmation of duty paid and imposing penalties. Original authority confirmed the demand of duty as proposed in the show cause notice and imposed a penalty of Rs.2,80,198/- under Rule 25 of the Central Excise Rules, 2002 and Rule 15 of Cenvat Credit Rules, 2004. He did not invoke section 11AC even though the show cause notice invoked section 11AC. [It has not been shown that the department filed any appeal against the order of

original authority before the Commissioner (Appeals)]. Commissioner (Appeals) has upheld the order of the original authority.

4. Learned Advocate for the appellants submits that it was merely a case of shortage of inputs and final products and no evidence has been relied upon to show that the short found goods were clandestinely removed. Therefore, she submits that at the most, it is a case of improper maintenance of accounts and penalty imposed is too harsh. She submits that they had not disputed the duty liability before the Commissioner (Appeals).

5. Learned SDR reiterates the findings and reasoning of the authorities below.

6. I have carefully considered the submissions from both sides. The shortage found on the date of visit by the officers are substantial. Further, it was a case of shortage of both raw materials and finished products, a deadly combination. The explanations for shortages offered are not at all convincing. However, the department has not pursued investigation to find any evidence about clandestine removal. The original authority has also refrained from invoking the provisions of section 11AC.

7. It is a clear case of failure to account for inputs on which Cenvat credit has been taken and also to account for final products which have been accounted in the statutory records. The appellants are under strict obligation to account for inputs on which the credit has been taken. Failure to account for clearly attracts the provisions of Rule 15 of the Cenvat Credit Rules. The appellants are also under strict obligation to account for manufactured goods

including its disposal and failure in this regard penal provisions under Rule 25(1)(b) of the Central Excise Rules, 2002.

8. In the absence of evidence of clandestine removal, I hold that there is scope for reducing the penalties imposed on the appellants. Taking the entire facts and circumstances of the case into account, I reduce the penalty from Rs.2,80,198/- to Rs. 75,000/- (Rupees Seventy-five thousand only). But for the reduction of penalty as above, the impugned order is upheld.

(M. Veeraiyan)
Member(Technical)

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