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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/2104 - 2105/2008 – SM[BR] AND E/ 2115-2116 / 2008-SM[BR] Date 14/12/2010

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 TIMEXO FASTNERS INDIA PVT. LTD.
Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1412 – 1415 / 2010-SM[BR] dated 30.11.2010 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 TIMEXO FASTNERS INDIA PVT. LTD.
2. SHRI VIRENDRA JAKHODIA, DIRECTOR
3. M/S TIMEXO FASTNERS INDIA PVT. LTD.
4. SHRI VIRENDRA JAKHODIA, DIRECTOR
127/544, S-BLOCK, JUHI GARHA, KANPUR.
2. Adv. / Consult SHRI A.K. DIXIT ADV.
113/145, SWAROOP NAGAR, KANPUR-2.

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)

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

Excise Appeal No.2104-05 & 2115-16 of 2008

[Arising out of Order-in-Appeal No. 271-272-CE/APPL/KNP/200 & 269-270-CE/APPL/KNP/2008 both dated 27.06.2008 passed by the Commissioner (Appeals), Customs & Central Excise, Kanpur].

Date of Hearing: 30th November, 2010

For approval and signature:

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

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

CCE, Kanpur Appellant

Vs.

1) M/s. Timexo Fastners India (P) Ltd.,
2) Shri Virendra Jakhodia, Director Respondents

Present for the Appellant : Shri R.K. Gupta, SDR
Present for the Respondent:Shri A.K. Dixit, Advocate

Coram: Hon'ble Shri M. Veeraiyan, Member (T)

final **ORDER NO.** 1412-1415/2010 SM (BR) **DATED**

PER M. Veeraiyan:

1.1 Appeal Nos. E/2104-05/08 are filed by the department against order of the Commissioner (Appeals) No. 271-272-CE/APPL/KNP/2008 dated 27.06.2008 by which the Commissioner (Appeals) set aside the penalties on the respondent company and the respondent Director imposed by the original authority vide order dated 28.3.2008.

1.2 Appeal Nos. 2115-16/2008 are also filed by the department against order of the Commissioner (Appeals) No. 269-270-CE/APPL/KNP/2008 dated 27.06.2008 by which the Commissioner (Appeals) have set aside the penalties imposed on the respondent company and the respondent Director.

1.3 The respondent company and the respondent Director involved in both the cases are the same and the facts are similar, and therefore, all the appeals are taken up together and disposed of by this common order.

2. Heard both sides extensively and perused the record.

3.1 In appeal Nos. 2104-05/08 the relevant facts are that on 20.6.2006 the officers visited the factory premises and, on verification of stock of finished goods they found 10850 kgs. of finished goods as against 19,850 kgs. and therefore, there was shortage of 9,000 kgs. of finished goods valued at Rs. 3,33,000/-. The Director of the company Shri Virendra Jakhodia admitted shortage in his statement given under Section 14 of the Central Excise Act and explained that the same would have happened due to the workers clearing the goods without issuing invoices and without payment of duty. On 30.6.2006 he voluntarily paid duty involved on the short found goods amounting to Rs. 54,346/-. The original authority, in pursuance of the show cause notice, confirmed the demand of duty and imposed equal amount of penalty on the company and Rs. 10,000/- on the Director. The Commissioner (Appeals), has set aside the penalties.

3.2 In appeal Nos. 2115-16/2008 the relevant facts are as follows:-

The officers visited the above company second time on 22.8.2006, and there appeared to be improvement! This time, the officers found only 3,580 kgs. of M.S. Wire as against the stock of 23,780 kgs. as per RG-1 account and thus a shortage of 20,200 kgs. In respect of M.S. Scrap they found only 2720 kgs. as against 14,520 kgs. as per RG-1 account and thus shortage of 11,800 kgs. The value of the short found goods was Rs. 6,12,920/-. The same Director gave the same story that short found goods might have been cleared, in his absence by his staff without issuing any central excise invoice and without payment of central excise duty. The Director arranged payment of entire duty involved i.e. Rs. 1,00,029/- in three instalments on 21.9.2006, 25.9.2006 and 7.10.2006. The original authority confirmed the demand of duty and imposed equal amount of penalty on the company and Rs. 20,000/- on the Director. The Commissioner (Appeals) has set aside the penalties.

4. Learned SDR submits that the company has indulged in clandestine removal of the goods. The goods found short on 20.6.2006 and 22.8.2006 were admitted to have been cleared without payment of duty in the statements given by the Director himself. The duties

involved on both the occasions stand paid voluntarily. There is no retraction of the statements given by the Director. Therefore, the order of the Commissioner (Appeals) in setting aside penalties imposed on the company and the Director, is not justified. He seeks setting aside the order of the Commissioner (Appeals) and restoration of orders of the original authority.

5. Learned Advocate for the respondents submits that the authorisation by the Committee of Commissioners is not proper and in this regard he relies on the decision of Hon'ble High Court of Punjab & Haryana in the case of CCE, Delhi-III vs. B.E. Office Automation Products (P) Ltd., reported in 2010 (249) ELT 24. He also submitted that the Director has no active role in clandestine clearance of the goods and hence no penalty can be imposed on him. He also relies on the decision of the Tribunal in the case of Nirmal Inductomelt Pvt. Ltd. vs. CCE, Jaipur, reported in 2010 (259) ELT 243 (Tri.-Del.). He submits that the original authority has not given option to pay reduced penalty in terms of proviso to section 11AC and he seeks that the said option may be extended in the light of the judgment of Hon'ble Delhi

High Court in the case of K.P. Pouches (P) Ltd. Vs. UOI, reported in 2008 (228) ELT 31 (Del.).

6. The objection of the learned Advocate that authorisation is not legal and proper though, is in the nature of preliminary objection, the same has been made very belatedly and not at the commencement of the hearing and also has been made without indicating which legal provision has been violated. It is not the case of the respondents that any particular format has been prescribed under the Act or the Rules which have not been followed. It has not been shown that there is any requirement that the Committee should meet together at one place and the members of the Committee put their signatures simultaneously. The Committee can decide the issue by circulation. This is well adopted practice in administration and judicial proceedings. For example, when the orders are passed by Division Bench of the Tribunal, the members of the Tribunal on many occasions sign the orders on different dates. This objection, in the facts and circumstances of the case, lacks basis and deserves outright rejection.

7. Coming to the facts of the case, it is noticed that when the officers visited on 20.6.2006 there was substantial shortage. When the officers again visited on 22.8.2006 the shortage was much higher in proportion and in value. If the Director of the company was ignorant as it is sought to be projected, he should be obliged to the officers of the central excise department for unearthing mischief of errant workers and staff of his company! The claim on behalf of the respondent that they cooperated in the investigation and promptly paid duty involved on the short found goods and therefore, no penalties are imposable is absurd. Merely because the company admitted the duty liability and paid the same, that is no ground for setting aside penalty. The Commissioner (Appeals) has either not noticed the admission statements of the Director or ignored in recording the same in his order-in-appeal. On both occasions huge shortages were found and the admission by the Director that the goods would have been cleared by his staff without payment of duty is sufficient to conclude that there was clandestine removal of the goods. It is not the case of the respondents that the Director of the respondent company

has retracted his statements. The statements have been acted upon by paying duty involved. These two are fit cases for invocation of provisions of Section 11AC. Therefore, setting aside the order of the original authority relating to imposition of penalties on the respondents were not justified.

8. In view of the above, orders of the Commissioner (Appeals) are set aside and orders of the original authority are restored.

9. However, the plea of the learned advocate for the respondents for extending option for paymment concessional penalty provided under the proviso to Section 11AC deserve to be accepted in the light of the decision of the Hon'ble High Court of Punjab & Haryana in the case of K.P. Pouches (P) Ltd. (supra).

10. In view of the above –

(a) Appeal Nos. 2104-05/08 are allowed and orders of the original authority are restored. However, respondents M/s. Timexo Fastners India Pvt. Ltd. are given an option to pay a sum of Rs. 13,586-50 within 30 days from today. In case they do not pay the amount as above within the period mentioned the penalty shall be Rs. 54,346/-.

(b) Appeal No. 2115-16/08 are allowed by setting aside the order of the Commissioner (Appeals) and restoring the order of the original authority. However, respondents M/s. Timexo Fastners India Pvt. Ltd. are given an option to pay Rs. 25,007-25 within 30 days from today. If they do not pay the above amount within stipulated period penalty shall be Rs. 1,00,029/-.

(Pronounced in the open Court)

(M. VEERAIYAN)
MEMBER (TECHNICAL)

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