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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/1752 - 1754 / 2006 -SM[BR] E / CO / 223 – 225 / 2008 -SM[BR] Date 30/09/2010

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

To :
CCE,INDORE

P.B.NO-10,MANIK BAGH PLACE INDORE

CCE,INDORE Appellant

Vs

M/S SOURABH POLYPLAST P LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1094 – 1096 / 2010-SM[BR] dated 16.9.2010 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 SOURABH POLYPLAST P LTD.
   2. SHRI RAJIV AGARWAL , DIRECTOR
   3. SHRI MOHD. IRSHAD , DIRECTOR
   13,NEMAWAR ROAD, INDORE
2. Adv. / Consult SHRI SAURABH YADAV ADV.
   A-5, BASMENT LAJPAT NAGAR-III.
   NEW DELHI-24.

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
NEW DELHI
Court No.IV

E/Appeal No.1752, 1753 and 1754/06-SM
E/CO 223-225/2008

(Arising out of order in appeal No. IND.1/132 to 134/2006 dated 30.3.2006 passed by the Commissioner of Central Excise (Appeals),Indore)

Date of Hearing: 16.9.2010

For approval and signature:

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

1. Whether Press Reporters may be allowed to see Under 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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CCE, Indore — Appellants

Vs

1. M/s Sourabh Polyplast Pvt Ltd — Respondent
2. Shri Rajiv Agarwal, Director
3. Shri Mohd. Irshad, Director

Appeared for the Appellant: Shri S.K. Bhaskar, JDR
Appeared for the Respondent: Shri Saurabh Yadav, Advocate

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

Final ORDER 1094-1096/2010 SM (Br)

Per M. Veeraiyan:

These three appeals are by the department against the same order of the Commissioner (Appeals) dated 30.3.2006 against M/s

Sourabh Polyplast Pvt Ltd, Shri Rajiv Agarwal, Director and Shri Mohd Irshad, Director as respondents. Cross objection No. 223/08, No. 225/08 and No.223/08 are filed by respondents namely M/s Sourabh Polyplat Pvt Ltd, Shri Rajiv Agarwal and Shri Mohd Irshad respectively.

2. Heard both sides.

3. The relevant facts in brief are that the officers visited the factory premises of the respondent company on 2.4.2004 and other respondents and conducted search. The respodents company had not maintained statutory record relating to receipt and issue of cenvetable inputs and also had not maintained statutory record relating to production and clearance of final products for several months. The officers found 200 numbers of water storage tanks valued at Rs. 2,31,375/- not accounted. It was specifically admitted by Shri Rajiv Agarwal, Director in his statement dated 2.4.2004 that during the year 2003-04, they have neither maintained RG-I register nor any private register or account. But they maintained only record pertaining to removal of goods from the factory and issued invoices which are computerized. It was also admitted that the RG.I , RG.23 Part I and Part II registers were written only upto 3.1.2004. It was also admitted by the authorized signatory that they have filed quarterly return only upto September, 2003. They could not file return for the quarter ending December, 2003. It was also admitted that clearances were effected by them during the period January 2004 to March, 2004 without payment of duty. The respondent company tendered a cheque for Rs. 5 lakhs which could not be encashed. However, the respondent

company paid a sum of Rs. 3,62,173/- under TR-6 challan dated 15.9.2004.

4. In pursuance of show cause notice, the original authority adjudicated the matter and ordered confiscation of 200 numbers of water storage tanks valued at Rs. 2,32,000/- but allowed the same to be redeemed on payment of fine of Rs. 58,000/-. He confirmed demand of Rs. 8,15,375/- in respect of clearances of water storage tanks during the period January 2004 to March, 2004. He adjusted the amount of Rs.3,62,173/- paid on 15.9.2004 and also adjusted available cenvat credit of Rs. 4,53,202/-. He demanded interest under Section 11AB. He imposed a penalty of Rs. 8,15,375/- under section 11AC of the Central Excise Act, 1944 and also gave the option to pay the interest due alongwith 25% of the penalty within 30 days from the date of communication of the order. In addition, he imposed penalty of Rs.20,000/- each on Shri Rajiv Agarwal and Shri Mohd. Irshad.

5. On appeal by these parties, the Commissioner (Appeals) upheld the confiscation of 200 number of water storage tanks but reduced the redemption fine from Rs. 58,000/- to Rs.25,000/-. He upheld the duty confirmed alongwith interest as per the order of the original authority. However, he set aside the penalty of Rs.8,15,375/- imposed under Section 11AC but imposed a penalty of Rs. 2,000/- under 25 of Central Excise Rules, 2002. He set aside the penalties imposed on the Directors.

6. Learned SDR submits that the respondent company have not written the production record for several months; they have not filed quarterly returns for the quarter ending December, 2003. They have

also not paid for clearances made during the period January 2004 to March, 2004 which was payable on 31st March 2004. They have not maintained Cenvat credit account but have indicated fictitious number for entries as if debited from RG 23 Part II.

7. The learned Advocate on behalf of the respondents submits that though RG-I was not written upto date by them, the clearances were affected on proper invoices. Since clearances were made on invoices, the conclusion of the original authority that there was unaccounted production and clandestine clearance/removals are not justified. The accounts relating to production and clearance and RG 23 Part I and Part II could not be updated as the concerned employee was on long leave. Though duty was not paid during the period January,2004 to March, 2004, in as much as the clearances were effected on invoices, it should be treated only as a case of delayed payment of duty and not as clandestine removal. Therefore, no penalty under Section 11AC, as held by the original authority, is imposable. He also submits that there was no specific finding against the Directors about knowledge or intention to evade payment of duty on their part and therefore, penalties on them are not justified. It is also submitted that the entire duty involved stands paid before issue of show cause notice.

8. I have carefully considered the submissions from both the sides and perused the record. As a manufacturer of excisable goods, their obligation to maintain production/clearances record on day to day basis either in RG I form or other private records as accepted by the department is a strict obligation. In this case, undisputedly the respondent company has not maintained the production record for

several months and merely because certain invoices were issued in respect of certain clearances, it cannot be held that they have fulfilled their basic obligation of maintaining production and clearance records. This violation clearly attracts the provisions of Rule 25(1)(b) of the Central Excise Rules, 2002. This omission has to be seen in the light of presence of 200 number of water storage tanks without any records. In addition, as a manufacturer, the respondent company was under obligation to maintain record on day to day basis of inputs on which they have taken cenvat credit. Admittedly, the RG 23 Part I and Part II were not written for several months. As on 31.1.2004, the RG.23 Part II maintained by them showed a negative balance! This is not a bank account with over draft facility! It is not in dispute that the respondent company has cleared several consignments during the months of January, February and March, 2004. The duty in respect of clearances made during January 2004 was to be paid by 15th February and in respect of clearances during February, 2004, the same was required to be paid by 15th March and for clearances made during March, the same required to be paid by 31st March, 2004. Thus, it is a clear case of non-maintenance of record of receipt and disposal of cenvat input, non-maintenance of records production and clearance of final products, clearance of excisable goods without payment of duty for three months. The plea that they could not maintain accounts because the accountant was on leave cannot be accepted. Further the respondent company has not filed any statutory return after the quarter ending September, 2003. Under these circumstances, the Commissioner (Appeals) treating this case as a case of delayed payment is highly erroneous. It is a case of non-accountal of inputs, non-accountal of production and clearance of final products and admitted case of clearance without payment of duty. This is a clear case attracting the provisions of Section 11AC of the Central Excise Act, 1944. Therefore, the Commissioner's finding that section 11AC is not attracted, cannot be upheld. The Commissioner (Appeals) has however, upheld the confiscation of unaccounted 200 number of water storage tanks but reduced the redemption fine from Rs. 58,000/- to Rs. 25,000/-. Since confiscation has been upheld, and the Commissioner (Appeals) has used his discretion to reduce the redemption fine, there is no need to interfere with this part of the order.

9. As regards the penalties on the Directors, in their statements given by them, both have admitted non-maintenance of record and non- payment of duty for three months which cannot be without their knowledge. The involvement of the Directors with knowledge and intention is clearly evident. Therefore, setting side of the penalties on the Directors by Commissioner (Appeals) is not justified. Further, it is seen that penalties imposed by the original authority on the directors is nominal.

10. In view of the above, the three appeals and the connected cross objections are disposed of as follows:-

a) order of the Commissioner (Appeals) is set aside and order of the original authority is restored; Thus the penalty of Rs. 8,15,375/- imposed is restored. while restoring the order of the original authority, the redemption fine imposed is reduced from Rs. 58,000/- to Rs 25,000/-.

b) While restoring the order of the original authority, it is ordered that the option given by the original authority shall be exercised without 30 days from today.

(M. VEERAIYAN)
Technical Member

MPS*

CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL, NEW DELHI

PRINCIPAL BENCH – COURT NO. 1

Excise Appeal No. 1752-1754 of 2006-SM

CCE, Indore — Appellant
Shri S.L. Meena, DR

Vs.

M/s Sourabh Polyplast P. Ltd. & Others — Respondent

Date of Hearing: 14.5.2008

ORDER SHEET

On request of the respondent adjourned to **26,6,2008**.

(JUSTICE S.N. JHA)
PRESIDENT

RM