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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/211 - 212 /2009 – SM[BR] Date 02/12/2010

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

To :
M/S RHL PROFILES LTD.
MAGARWARA, DISTT. UNNAO (U.P.)

M/S RHL PROFILES LTD. Appellant
Vs
C.C.E. KANPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1333-1334 / 2010-SM[BR] dated 18.11.2010 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   C.C.E. KANPUR
   117/7, SARVODAYA NAGAR, KANPUR 208005.
2. Adv. / Consult SHRI K.K. ANAND 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)

3. SHRI M.S. DIXIT, DIRECTOR & AUTHORISED SIGNATORY,
M/S RHL PROFILES LTD. MAGARWARA, DISTT. UNNAO (U.P.)

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

Excise Appeal No.211-212 of 2009-SM
(Arising out of Order-in-Appeal No.371-372/CE/APPL/KNP/2008 dated 18.8.2008 passed by the CCE(A), Kanpur)

Date of Hearing/Decision: 18.11.2010

For approval and signature:
Hon'ble Mr.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

M/s.RHL Profiles Ltd. Appellant
Shri M.S.Dixit, Director & Authorized Signatory

Vs.

CCE & C, Kanpur Respondent

Present for the Appellant : Shri Siddharth Garg, Advocate
Present for the Respondent: Shri Anil Khanna, DR

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

Final **ORDER No.** 1333-1334/2010 SM(BR)

PER: M.VEERAIYAN

These two appeals arise against the Order-in-Appeal No.371-372/CE/APPL/KNP/2008 dated 18.8.2008 of the Commissioner (Appeals), by which the order of the original authority confirming the demand of Rs.2,50,175/- and imposing equal amount as penalty on the appellant company and a penalty of Rs.10,000/- on the director of the appellant company was upheld.

2. Heard both sides.

3. The relevant facts of the case, in brief, are that the officers visited the premises of the appellant company on 17.5.2006 and recovered 20 loose slips indicating despatch of different quantities of M.S.Bars & Rods totally weighing 73.355 MT valued at Rs.15,32,940/-. Shri M.S.Dixit, Director of the appellant company in his statement dated 17.5.2006 given under Section 14 of Central Excise Act, 1944.admitted that the said quantity of the finished goods was removed without issue of invoices and without payment of central excise duty. The duty involved amounting to Rs.2,50,175/- was deposited on 24.5.2006 and intimated vide letter dated 26.5.2006. A show cause notice dated 30.4.2007 was issued proposing confirmation of duty and proposing imposition of penalty under Section 11AC on the appellant company and a penalty on the director of the appellant company. The original authority passed order which stands upheld by the Commissioner (Appeals) as mentioned earlier.

4. Learned Advocate for the appellants submits that the entire duty involved stands paid before issue of show cause notice. He takes me to the explanation offered by Shri S.N.Tulsian, Manager and Shri S.K.Rai, Manager in their affidavits. According to them, the goods referred to in the loose slips were received from M/s.M.A.Traders and the same were rejected by the appellants and consignments delivered to different parties as directed by M/s.M.A.Traders, Kanpur. The director was not aware that the goods were purchased from M/s.M.A.Traders and the same were rejected and sent to different parties and therefore his admission should not be relied upon.

5. Learned Advocate alternatively submits that neither the original authority nor the Commissioner(Appeals) gave the option to pay concessional penalty as per proviso to Section 11AC and therefore they should be permitted to pay reduced penalty in terms of the decision of Hon'ble Delhi High Court in the case K.P.Pouches reported in 2008 (228) ELT 31.

6. I have carefully considered the submissions made from both sides and perused the records. The loose slips contained details of clearances of various quantities date-wise. These were not accounted in the production and clearance accounts of the appellant company. The director of the company in his statement dated 17.5.2006, has clearly admitted the removal of the goods without preparing excise invoices and without payment of duty. It has not been shown that the director has retracted his statement. Subsequent to the issue of show cause notice a defence has been taken which is like building a castle in the air. It has been claimed that the appellant company has procured M.S.Ingots from M/s.M.A.Traders, Kanpur, even though they are manufacturing of the very same products. After the receipt of the same, it is claimed, that they realized that the goods were not upto the standard and on the advice of M/s.M.A.Traders, the same have been sent to the different customers and, therefore, the said quantity has not been accounted in the books of accounts of the appellant company as manufacture and clearance. No evidence whatsoever about placing any order to M/s.M.A.Traders or transport of the goods from Kanpur to Unnao or about payments from the buyers and payments to M/s.M.A.Traders has been placed. The affidavits of Shri S.N.Tulsian, Manager and Shri S.K.Rai, Manager are clearly contrary to the un-retracted statement of director of the company. Apparently, these are false affidavits

solicited by the director from the mangers. Without any retraction by the appellant director, it is not known how nearly after two years the mangers made such affidavits which are contrary to the facts admitted by the director. The affidavits have been rightly rejected by the lower authorities. However, in the light of the alternative submission made by the Advocate that the entire duty of the amount having been paid before issuance of show cause notice and in the absence of option having been given by the original authority and the Commissioner (Appeals) to pay concessional penalty, and in the light of the decision of Hon'ble Delhi High Court in the case K.P.Pouches cited supra, the appellant company is permitted to deposit a sum of Rs.62,543.75 within thirty days from today. If the amount is not paid within the stipulated time, the penalty shall be Rs.2,50,175/-.

7. As regards, penalty of Rs.10,000/- imposed on the appellant director, considering his knowledge about clearance of the goods without issue excise invoices and without payment of duty and considering that he is authorized signatory of the company, the penalty is justified. Further, I notice that the penalty is also minimal. In view of the above, the appeal filed by the director is rejected.

8. The appeal of the appellant company is disposed of as mentioned above by upholding the demand but giving option to pay reduced penalty within the thirty days from today.

(Dictated and Pronounced in the open court)

(M.VEERAIYAN)
MEMBER (TECHNICAL)

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