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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

Date 07/12/2010

Appeal No. E/2106/2008 – SM[BR]

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 R.S.L. INDUSTRIES LTD. — Respondent

I am directed to transmit herewith a certified copy of **Final order** No.1345 / 2010-SM[BR] dated 24.11.2010 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   M/S R.S.L. INDUSTRIES LTD.
   367, INDUSTRIAL AREA, SITE-II, RANIA, KANPUR.
2. Adv. / Consult
   NONE:--------------

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.
Single Member Bench

Excise Appeal No.2106 of 2008-SM
(Arising out of Order-in-Appeal No.268/CE/APPL/2008 dated 27.06.2008 passed by the CCE(A), Kanpur)

Date of Hearing/Decision: 24.11.2010

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?	NO
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	NO
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?	NO

CCE, Kanpur Appellant

Vs.

M/s.R.S.L. Industries Ltd. Respondent

Present for the Appellant : Shri S.K.Bhaskar, SDR
Present for the Respondent: None

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

Final **ORDER No.** 1345/2010 SM(BR)

PER: M.VEERAIYAN

Heard learned SDR on the appeal filed by the department. None appeared for the respondent, in spite of notice.

3. This is a case of unexplained shortage of finished goods and raw material, which was noticed during the visit of the officers on 3.5.06. The authorised signatory of the respondent company was unable to state the reasons for shortage detected by the officers. However, the respondents paid the entire duty amounting to Rs.1,07,301/- on 7.7.06. The original authority, in pursuance to the

show cause notice dated 26.4.07, confirmed the demand of duty and also imposed equal amount as penalty under Section 11AC of Central Excise Act, 1944. The Commissioner (Appeals), on appeal filed by the party, set aside the penalty on the grounds that the appellant has paid duty before issue of show cause notice and that there was no corroboration for allegation of clandestine removal.

4. Learned SDR reiterated the grounds of appeal.

5. I have carefully considered the submissions and perused the records. No doubt the shortage stands admitted and duty involved stands paid. Every case of shortage cannot be presumed to be a case of clandestine removal in the absence of any evidence to this effect. There is neither any confession by the concerned person admitting clandestine removal nor any evidence in the form of private records including transport documents or any bill. Under these circumstances, the Commissioner (Appeals) has held that the finding of clandestine removal by the original authority was not corroborated and the said decision calls for no interference. However, the payment of duty before issuance of show cause notice cannot be the cause for setting aside the penalty. In the absence of any corroboration for clandestine removal, the ingredients for invoking Section 11AC are absent and therefore the order of the Commissioner (Appeals) in setting aside the penalty calls for no interference.

6. The appeal filed by the department is rejected.

(Dictated and Pronounced in the open court)

(M.VEERAIYAN)
MEMBER (TECHNICAL)

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