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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/1047/2009 – SM[BR] Date 07/12/2010

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 RAJASTHAN TRANSFORMERS & SWITCHGEAR, Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1346 / 2010-SM[BR] dated 23.11.2010 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 RAJASTHAN TRANSFORMERS & SWITCHGEAR,
   NEAR 14 KM MILE STONE, POST-ARTONI, MATHURA ROAD, AGRA.
2. Adv. / Consult SHRI BIPIN GARG ADV.
   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)

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

Excise Appeal No.1047 of 2009-SM
(Arising out of Order-in-Appeal No.43-CE/Appeal/KNP/2009 dated 13.03.2009 passed by the CCE(A), Kanpur)

Date of Hearing/Decision: 23.11.2010

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.Rajasthan Transformers & Switchgear Respondent

Present for the Appellant : Shri I.Baig, SDR
Present for the Respondent: Ms.Sukriti Das, Advocate

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

Final **ORDER No.** 1346 /2010 SM (BR)

PER: M.VEERAIYAN

Heard both sides.

2. The department is aggrieved that the penalty of Rs.57,302/- imposed by the original authority under Section 11AC read with Rule 25 of Central Excise Rules, 2002 and Rule 15 of Cenvat Credit Rules, 2004 was set aside by the Commissioner(Appeals).

3. There was shortage of inputs and finished goods and the duty/credit involved on the said goods was paid before issue of show cause notice. The liability to duty was not disputed before the

original authority as well as before the Commissioner (Appeals). The prayer before the Commissioner (Appeals) was for setting aside the penalty imposed under Section 11AC read with Rule 25 of Central Excise Rules, 2002 and Rule 15 of Cenvat Credit Rules, 2004. The Commissioner(Appeals) after noting that it was merely a case of unexplained shortage and that there was no evidence of any clandestine removal of the finished goods or disposal of inputs on which the credit had been taken, has set aside the penalty. The grounds of appeal do not disclose any materials which can upset the above finding of fact by the Commissioner (Appeals).

4. The appeal is therefore rejected.

(Dictated and Pronounced in the open court)

(M.VEERAIYAN)
MEMBER (TECHNICAL)

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