CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
OLD RED BUILDING, 38,M.G.Marg,CIVIL LINES, ALLAHABAD

Dated: 13/1/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **A/ 70082/2016** dated 6/1/2016

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section **35-C(1)** of the **Central Excise and Salt Act, 1944.**

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
	E/2056/2010	AMBA STEELS MEERUT ROAD MUZAFFARNAGAR(UP)

Name and Address of Respondent.	CCE, MEERUT I UNIVERSITY ROAD, MANGAL PANDEY NAGAR, MEERUT(UP)

Other Appellants and Respondents as per Annexure

Copy To

3 Advocate(s) / Consultant(s): SH RAJESH CHIBBER,ADV
FA-9 KAVI NAGAR
GHAZIABAD(UP),

4 Bar Association, CESTAT, Delhi
5 Director Publications, Customs, Excise. I.P. Estate, Delhi
6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3
7 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17
8 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005
9 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15
10 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
11 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi – 110070

12 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

13 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar
Regional Bench, Allahabad

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD

Ex.Appeal No.2056/10

Arising out of OIA No.211-CE/MRT-I/2010 dated 23/02/2010 passed by the Commissioner (Appeals-), Central Excise & Customs, Meerut.

For approval and signature:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

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?	: Yes
3.	Whether His Lordship wishes 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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M/s Amba Steels ...APPELLANT(S)

VERSUS

Commissioner of C.Ex., Meerut I RESPONDENT (S)

APPEARANCE

Shri Rajesh Chibber, Adv. for the Appellant (s)
Shri Chatru Singh, Asstt.Commr. (A.R.) for the Respondent

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

DATE OF HEARING & PRONOUNCEMENT : 06.01.2016

Final ORDER NO. 70002/2016

CUSTOMS EXCISE & SERVICES TAX APPELLATE TRIBUNAL

Per Mr. Anil Choudhary :

The appellant, M/s Amba Steels, is a manufacturer of M.S. Ingots and M.S. Bars & TMT bar. The appeal is against order in appeal dated 23/02/2010 wherein the order-in-original have been upheld whereby duty for alleged shortage in stock amounting to Rs.17,05,019/- was confirmed and further penalty was imposed of Rs.15,31,716/- under Section 11 AC of the Central Excise Act, 1944 read with rule 25 (1) of the Central Excise Rules, 2002 and Rs.1,73,303/- under section 11 AC read with rule 15 of CCR, 2004.

2. The brief facts are that the inspection was carried on by the office of the revenue which started on 6.9.2007 at about 5 PM and ended on 7.9.2007 at about 3:30 AM as mentioned in the Panchnama. According to the Panchnama, the stock was valued in the presence of one Mr. Atul Bhatnagar, Authorized Signatory of the appellant. As per the Panchnama, there is some shortage found in the stock and the duty on the same was calculated at Rs.17,05,019/-. Further the statement of Shri Manish Goel, Director of the appellant, was also recorded. In the statement, it is stated by the Director that he is satisfied with the manner of stocktaking. Further, in respect of the shortage, it was stated that the variation may be due to oversight or clerical error by the dealing person and no other justification or explanation could be offered. Further, the Director agreed to deposit the amount of duty on the shortage. Subsequently, the duty was deposited under the intimation to the revenue.

3. The show cause notice dated 1.9.08 was issued on the basis of the Panchnama drawn on 6th/7th September,2007, as it appeared to

revenue that the appellant have cleared goods found short, during physical verification, clandestinely without payment of duty. Further, the plea of clerical error or oversight for shortage was not found reasonable and it is further appeared that the appellant have removed the goods found short clandestinely without issuing proper invoices. The appellant contested the show cause notice stating therein that they have two independent shed in the factory premises. One is for induction furnace (ingot) and the other for the re-ruling. The appellant manufactures ingots as well as purchased ingots which are used in further manufacture of TMT bars. The manufactured ingots are transferred to the ruling section and there, they get mixed with the purchased ingots.. Some part of the manufactured ingots are in hot condition and cannot be handled or accounted. Further, some in the furnace of the rolling mill, which are not visible as manufacturing process requires high-temperature in the rolling mill. It was further contended that the Panchnama is silent as to the manner of verification. The officers of the Inspection team had arrived at 5.00 P.M. on 6.9.2007 and they left at 3.30 A.M. on 7.9.2007. Thus it is apparent that no proper investigation or physical verification was made of the stock as it is not possible to verify the stock which was more than 3000 MT and lying scattered over a large area in the factory premises. Thus the stock taking was only eye estimation and as such the same is not reliable and the deposit of duty or agreeing to the apparant shortage do not lead to any adverse inference of clandestine removal. It was further stated that the charge of clandestine removal was based on presumptions and have no legs to stand. The SCN was adjudicated and the proposed demand confirmed with penalty under section 11 AC. Being aggrieved the appellant preferred appeal before the learned Commissioner (Appeals) who have been pleased to dismiss the appeal only on the ground that the appellant had admitted the shortage at the time of inspection and the Director of the appellant could not putforth any cogent explanation for the shortage and agreed to pay duty. Under such circumstances, no further investigation was warranted to corroborate the facts.

4. Being aggrieved the appellant is in appeal before this Tribunal. The ld. Counsel points out that panchanama is silent as to the manner of verification of stock and at best it appears to be eye estimation. Thus, it is apparent that the stock has been verified on the basis of eye estimation, no adverse inference could have been drawn against the appellant in spite of the deposit of tax by the appellant. The ld. Counsel relies on the ruling of the Honourable Allahabad High Court in the case of CCE versus Minakshi Castings : 2011 (274) E.L.T. 180 (All.). The Honourable High Court had upheld the finding of the Tribunal that there is no material or evidence of any kind to support the findings that the assessee had clandestinely removed the goods which did not tally with physical stock. In substance, it was found that there was shortage of finished goods. The shortage of finished goods, by itself would not unless it is related to clandestine removal of finished goods, for which there was no material evidence, infer evasion of Excise duty and that no penalty can be imposed. The ld. Counsel also points out from the statement of facts that neither the revenue at any point of time asked for making adjust in the stock records nor the

appellant adjusted the alleged shortage in the stock register and continued with the closing balance as was there at the time of inspection. The appellant have been regularly clearing goods on payment of duty. In other words it amounts to double payment of duty on the alleged shortage.

5. The ld. A.R. for revenue relies on the impugned order. He further states that it was the duty of the appellant to the stock records with the alleged shortage on which they had paid the duty. The appellant cannot take any advantage for not making adjustment in the stock records.. The ld.A.R. further states that in view of the admission made by the direction of appellant and payment of duty the revenue is justified in concluding clandestinely removal of the stock found short. Accordingly, he prays for dismissing the appeal.

6. Having considered the rival contentions I find that the Panchanama is silent as to the manner of stock taking. Thus at best, it is a matter of eye estimation made by the inspection team. I hold that on the basis of such eye estimation, no conclusion of shortage can be drawn against the appellant. In this view of the matter, the whole proceeding is vitiated. Thus, I set aside the impugned order and allow the appeal. The appellant will be entitled to consequential relief, in accordance with law.

(Dictated and pronounced in the open Court)

Sd/-

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

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प्रमाणित प्रति / Certified True Copy
21.1.16
सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण / (C.E.S.T.A.T.)
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ALLAHABAD-211001