FAX : 0532-2400149 REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 02/03/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70234/2017-EX[DB] dated 01/03/2017

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
1	E/1007/1998	Shri R.k.somani A-9, Sarvodaya Nagar, KANPUR UTTA R PRADESH
		Name and Address of Respondent
2		C.C.E. & S.T.-Kanpur 117/7...SARVODYA NAGAR, KANPUR, UTTAR PRADESH-208005

Copy To

3Advocate(s) / Consultant(s):

NISHANT MISHRA AND
SUDARSHAN SINGH
ADVOCATES
B2-3/4-31, SAROJANI
APARTMENTS, SAROJANI
NAIDU MARG,
ALLAHABAD-211001

4 Bar Association, CESTAT, Allahabad

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 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

10 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

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

12 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

13 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
<u>REGIONAL BENCH : ALLAHABAD</u>

<u>Appeal No. : E/1007/1998-EX[DB]</u>

Arising out of OIO No.01/Commr./MP/98 dated 28.01.1998 passed by Commissioner, Central Excise, Kanpur-I.

For approval and signature:

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

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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

Shri R.K. Somani ...APPELLANT

VERSUS

C.C.E., Kanpur ...RESPONDENT

APPEARANCE

Shri Nishant Mishra, Advocate for the appellant-assessee.
Shri Amit Kumar Mishra, Dy. Commr., (A.R.) for the Department.

CORAM:

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

<u>DATE OF HEARING & PRONOUNCEMENT : 26. 10. 2016</u>

<u>FINAL ORDER NO. 70234/2017</u>

Per Mr. Anil Choudhary :

The appellant herein is Director of Somani Iron & Steels Ltd. (SISL for short) vide common Order-in-Original dated 28.01.1998, a penalty of Rs. 50,00,000/- was imposed under Section 209A of Central Excise Rules, 1944. The finding against him in the OIO is that, he is Managing Director of SISL and as such was aware with the clandestine removal of the company and was also the beneficiary, wherein a demand of Rs. 4,39,98,310/- was imposed vide the same common OIO.

2. The learned counsel for the appellant urges that there is no finding of his involvement in any clandestine activity. He further relies on the finding in the Final Order No. A-388-95/03-NB-C dated 22.07.2003 wherein the matter of the main company Somani Iron & Steels Ltd. and others, this Tribunal have recorded following findings :-

> *"4. On the basis of above mentioned shortage, it was alleged that during the period from Feb., 90 to 17.1.93, appellants suppressed the production of 62202 Mts of ingots and this quantity was cleared without payment of duty to their sister concerns. A demand of Rs. 4,39,98,310/- was made against the appellants as well as to their sister concerns for imposition of penalties. The adjudicating authority confirmed the demand and imposed penalty of Rs. Three crore upon M/s. Somani Iron & Steels Ltd. under Rule 173 Q of the Central Excise Rules. A penalty of Rs. 50 lakh each was imposed on Shri R.K. Somani, M.D., M/s. Somani Iron & Steels Ltd. under Rule 209A of the Central Excise Rules. A penalty of Rs. Five lakh was imposed on M/s. RHL Profiles Ltd. and M/s. Usha Udyog each. A further penalty of Rs. 50 lakh was imposed on Sh. K.K. Somani, President, M/s. RHL Profiles Ltd. A penalty of Rs. 25 lakh was imposed on Sh. K.K. Singh, Manager, M/s. Somani Iron & Steels Ltd. under Rule 209A of the Central Excise Rules.*

5. Learned Sr. Counsel, appearing on behalf of the appellants, submits that the allegation of suppression of production is only on the ground that the appellants were recording lesser production in terms of number of heats per day and lesser quantity of production per heat. The private record recovered from the factory premises only relates to the period from 01/01/1993 to 17/01/1993 and most of the entries alleged to have been made by one Sh. Lalit Tewari. No statement of Sh. Lalit Tewari was recorded. The allegation against the appellants is that their employee, Sh. Lalit Tweari made entries in the private record in a codified manner and there is no evidence on record to show that relevant records, recovered from the appellants factory, were in the hands of Sh. Lalit Tewari.

6. The contention of the appellants is that the production for the period from 17/01/1993 to 18/01/1993 i.e. his ... were not recorded in their statutory records due to the visit of Excise Officers and this production was not taken into consideration by the Adjudicating Authority while calculating the excess quantity alleged to have been produced by the appellants during 01/01/1993 to 17/01/1993.

11. We find that the private records recovered from the appellants premises showing the date wise detail in respect of issue of raw-material for each heat, the number of heats during the period from 01/01/1993 to 17/01/1993 which shows excess production than the quantity shown in the statutory record. In these circumstances, from the evidence on record, we find no merits in the arguments of the appellants in respect of demand of Rs.6,63,320/- in respect of 72.1 MTs of ingots on the ground that the appellants during the period from 1.1.93 to 17.01.93 has not recorded the actual production and suppressed the production of heats.

12. In respect of demand for the period from Feb. 92 to 17.1.93, the demand was calculated on the basis of the quantity of production alleged to have been suppressed during the period from 1.1.93 to 17.1.93. There is no other evidence to show that the appellants were recording less production than the actual production during this period. The adjudicating authority confirmed this demand for this period by multiplying the excess production for the period from 1.1.93 to 17.1.93.

13. The adjudicating authority in para 196 of adjudication order observed that 'it is' an open secret that industrial units engaged in the manufacture of steel generally resort to the pilferage of power. Therefore, the power *consumption records as maintained by the party and also based on which the U.P. Electricity Board took their charges could not fully relied'. We find that these are general observations and without any evidence on records. There is no allegation that the appellants were involved in the theft of electricity. Appellants produced records regarding consumption of electricity during the relevant time to show that from the power consumed by them, the alleged quantity of M.S. ingots cannot be produced. This evidence is not rebutted by the adjudicating authority and the adjudicating authority rejected the same on the basis of general presumption, which is not sustainable.*

14. In respect of penalty imposed on sister concerns of appellant firm, there is no evidence on record to show that they were receiving ingots from the appellant firm on which no duty had been paid. The adjudicating authority held that when the goods were cleared without payment of duty, therefore, these will not be shown in respect of their sister concern. We find that this finding is also without any evidence. We find that in these circumstances, when there is no evidence to show that the sister concerns received any duty paid goods, the penalty on the firms as well as their President/Manager are also not sustainable.

15. In view of above discussion, the demand of Rs. 6,63,320/- is upheld and the remaining demand is set aside. The penalty on M/s. Somani Iron & Steels Ltd. is reduced to Rs. 50,000/- under Sec. 209A of Central Excise Rules. Penalties on M/s. R.H.L. Profiles and M/s. Usha Udyog are set aside. Consequently, the penalty on Sh. K.K. Somani, President, M/s. R.H.L. Profiles Ltd. and on Sh. K.K. Singh, Managing Director, Usha Udyog is also set aside. The appeals are disposed of as indicated above."

3. The learned counsel urges that this Tribunal have found the demand unsustainable on most of the counts and against that adjudicated demand of Rs. 4,39,98,310/- approximately, have reduced demand to Rs. 6,63,320/- and thereby set aside the balance demand. Accordingly, the penalty on the main appellant Somani Iron & Steels Ltd. was also reduced from Rs. Three crore to Rs. 50,000/- and penalty on others appellants was set aside, only the name of this

appellant was left out, as it appears, by the Tribunal. As such it is just and proper to set aside the penalty on this appellant also in view of the categorical finding of this Tribunal.

4. Learned A.R. relied on the impugned order and also on order of this Tribunal refered above and stated that disproportionate penalty may be maintained as he was the Managing Director and C.E.O. of the company and as such he was definitely aware with the misdeeds going on in the company.

5. Having considered the rival contentions, we are satisfied, taking notice of the findings in the final order of this Tribunal referred above, where demand and penalty have been reduced. Penalty on Mr. R.K. Somani is reduced to Rs. 25,000/- under rule 209A of Central Excise Rules, 1944. Accordingly, the appeal is allowed in part as indicated above. We are informed that appellant had made pre-deposit of Rs. 10 lakh, pursuant to interim stay order of this Tribunal. We direct the concerned Adjudicating Authority to refund the balance of aforesaid amount to appellant with interest as per rules forthwith, within a period of 75 days from the date of receipt of certified copy of this order.

(Pronounced in the open Court)

-Sd/-
(ANIL G. SHAKKARWAR)
Member (TECHNICAL)

-Sd/-
(ANIL CHOUDHARY)
Member(JUDICIAL)

Patel/-

प्रमाणित प्रति / Certified True Copy
07/03/2017
सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पाद शुल्क एवं सेवा कर
अपील अधिकरण / (C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001