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: 05/12/2017

To:

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71828/2017-SM[BR] dated 26/10/2017

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/Stay/2650/2009	E/2566/2009	HARYANA PIPES P.LTD C-216, BS Road Ind Area, Ghaziabad(UP)
			Name and Address of Respondent
2			-C.C.E. GHAZIABAD C.G. O. Complex-II, Kamla Nehru Nagar, Ghaziabad 201302

Copy To

3 Advocate(s) / Consultant(s):

Rajesh Chhibber, CAS
ASSOCIATES
A-403, 414-415 SOMDUTT
FA-9,KAVI NAGAR
GHAZIABAD
UTTARPRADESH
201002

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, Opp ICICI Bank of Defence Colony 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,Panjagutta 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 Second Folder Copy 17 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No. E/2566/2009-EX[SM]

(Arising out of Order-in-Appeal No. 172-CE/GZB/2009 dated 15/07/2009 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Meerut-I at Ghaziabad)

M/s Haryana Pipes P. Ltd. — Appellant

Vs.

Commissioner of Central Excise, Ghaziabad — Respondent

Appearance:

Shri Rajesh Chhibber, (Advocate), for Appellant
Shri Gyanendra Kumar Tripathi, Assistant Commissioner (AR), for Respondent

CORAM:

Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing & Date of Decision : 26/10/2017

FINAL ORDER NO. 71828/2017

Per: Anil G. Shakkarwar

The present appeal is directed against Order-in-Appeal No. 172-CE/GZB/2009 dated 15/07/2009 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Meerut-I at Ghaziabad.

2. The brief facts of the case are that the Officers of the Central Excise Department visited the manufacturing unit of the appellant on 18/12/2006. On physical verification of finished goods (M.S. Pipes), the Officers of the Central Excise Department noticed shortage of 44.471 MT of M.S. Pipes valued at Rs.12,42,698/- involving Central Excise duty of

Rs.2,02,807/-. Through a Show Cause Notice dated 18/06/2007, appellant was called upon to show cause as to why Central Excise duty of Rs.2,02,807/- should not be recovered from them involved in the goods found short in the factory of the appellant. The appellant submitted to the Original Authority through their letter dated 21/07/2007 that they accounted for the production on formula basis, though they cleared finished goods on actual basis and therefore, by even a marginal difference in the percentage of accounting, the same could result in difference in the stocks and that such difference get rectified/corrected while making clearances from the factory which is on actual basis. They, further, submitted that there was no evidence of removal of goods and therefore it could not be concluded that the said difference was on account of removal of goods from the factory. The Original Authority through Order-in-Original No. 30/Div-IV/08-09 dated 03/04/2009, confirmed the demand and imposed equal penalty under Rule 25 of the Central Excise Rules, 2002 read with Section 11AC of the Act. Being aggrieved by the said order, the appellant preferred appeal before Commissioner (Appeals). The ld. Commissioner (Appeals) decided the said appeal through impugned Order-in-Appeal dated 15/07/2009, wherein the appeal filed by the appellant was rejected. Being aggrieved by the said order, the appellant preferred appeal before this Tribunal.

3. Heard the ld. Counsel for the appellant, who has submitted that the method of entering into RG-1 was on the basis of formula and therefore, the reference with which shortage was calculated was presumptive in nature and there was no evidence of clandestine removal of the finished goods and therefore, imposition of penalty was not justified. He has relied on ruling by Hon'ble High Court of Allahabad in the case of Commissioner of Central Excise, Kanpur *Versus* Minakshi Castings reported at 2011 (274) E.L.T. 180 (All.).

4. Heard the ld. A. R. for Revenue, who has supported the impugned Order-in-Appeal dated 15/07/2009.

5. Having considered the rival contentions and on perusal of the facts on record, I find that there are no allegations that goods were cleared clandestinely or there has been a case of evasion of duty. The shortage was noticed by the Officers of Central Excise Department on 18/12/2006 as compared to the stock recorded in RG-1 register and the appellant has explained that the entries in RG-1 register were on the basis of formula and it was not on the basis of actual weight. The appellant is contesting imposition of penalty. Therefore, I do not go into the merit of entries in RG-1 register. I find that there are no allegations in the said Show Cause Notice dated 19/06/2007 to establish that there was any clandestine clearance of the finished goods. Therefore, there is no case of evasion of Central Excise duty. The Hon'ble High Court of Allahabad in the case of Commissioner of Central Excise,

Kanpur *Versus* Minakshi Castings (supra) has ruled as follows:-

> "The shortage of finished goods, by itself could not unless it is related to clandestine removal of finished goods for which there was no material evidence, infer evasion of Excise duty and thus no penalty can be impose."

Following the said ruling, I hold that in the present case imposition of penalty of Rs.2,02,807/- is not sustainable. In above terms, the appeal is allowed. The appellant shall be entitled for consequential relief, as per law.

(Dictated & Pronounced in Court)

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

Ansari

प्रमाणित प्रति/Certified True Copy
09/01/18
सहायक पंजीकार/Asstt. Registrar
सीमा शुल्क, 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