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CUSTOMS. EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Appeal No. E/4988/2004 Date 19/06/2008

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
C.C.E. MEERUT
UNIVERSITY ROAD, MANGAL PANDEY NAGAR,
MEERUT

C.C.E. MEERUT Appellant

Vs

M/S GARHWAL ROLLING MILLS (P) LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.**342/08 **Excise** dated 03-6-08

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
   M/S GARHWAL ROLLING MILLS (P) LTD.
   TEHRI GARHWAL
2. Adv. / Consult
   NONE
3. C.D.R.
4. ~~J.C.D.R.~~
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017
7. M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12. Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai 60017
13. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Excise Appeal No. 4988 of 2004

(Arising out of Order-in-Original No. 450-CE/MRT-I/2004 dated 05.07.2004 passed by the Commissioner of Central Excise, Meerut-I).

DATE OF HEARING : 03.06.2008
DATE OF DECISION : 03.06.2008

FOR APPROVAL AND SIGNATURE :

HON'BLE MR. JUSTICE S.N. JHA, PRESIDENT
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?	Yes

CCE, Meerut .... **Appellant**
(Rep. by Sh H.K. Thakur, Jt. CDR)

VERSUS

M/s Garwal Rolling Mills (P) Ltd. .... **Respondents**
(Rep by NONE)

CORAM : HON'BLE MR. JUSTICE S.N. JHA, PRESIDENT
HON'BLE MR. M. VEERAIYAN, MEMBER (T)

FINAL ORDER NO. 342/08-EX

PER M. VEERAIYAN :

The respondent is not represented in spite of notice for today's hearing. The Department is represented by the DR. Therefore, we are proceeding to decide the appeal on merits.

2. This is an appeal by the Department against the order of the Commissioner (Appeals) dated 05.06.2004 by which the penalty amount of Rs. 18,78,800/- imposed by the Original Authority was reduced to Rs. 75,000/-.

3. The relevant facts, in brief, are as follows :

(i) The respondent is a manufacturer of iron and steel products which is covered under the Compounded Levy Scheme and was required to pay Rs. 1,70,800/- per month w.e.f. 18.08.1998. There has been delay in payment of the amounts payable for the months April, 1999 to March, 2000;

(ii) The entire amount of duty involved along with interest stands paid.

(iii) The Department initiated proceedings for imposition of penalty and accordingly Original Authority imposed penalty of Rs. 18,78,800/- under proviso 4(ii) of Rule 96 ZP(3) of Central Excise Rules, 1944; and

(iv) On appeal by the party, the Commissioner (Appeals) taking into account that the entire duty involved along with interest stands paid, reduced the penalty to Rs. 75,000/-. He has relied on various precedent judgments including the judgment of the Supreme Court in the case of **Hindustan Steel Ltd. vs State of Orissa,** 1978 ELT 159 (SC), to reduce the penalty.

4. Learned DR submits that the Rule 96 ZP(3) makes it clear that in the event of delay in payment of duty determined under Compounded Levy Scheme, penalty equal to the amount of duty, which was paid after delay, requires to be imposed. Therefore, the order of the Commissioner (Appeals) is not legal and proper. He relies on the decision of the Hon'ble High Court of Allahabad in the case of **Pee Aar Steels (P) Ltd. vs CCE, Meerut,** 2004 (170) ELT 406, wherein it has been held that the penalty mentioned in the fourth proviso to Rule 96ZP(3) is not a maximum penalty but the only penalty.

5. We have carefully considered the submissions. In similar circumstances also, involving cases of delay in payment of duty under the Compounded Levy Scheme, the Tribunal in the case of **Balakrishna Dyeing & Printing Mills vs CCE, Surat**, reported in 2007 (213) ELT 199, has held that penalty should be commensurate with the gain, if any, made by the party. The above decision has been arrived at by following the ratio of the law laid down by the

Hon'ble Gujarat High Court in the case of **Parmeshwar Dyeing & Printing Mills Pvt. Ltd. vs Union of India,** 2005 (191) ELT 86.

6. In the present case, admittedly, there was delay in payment of duty payable under the Compounded Levy Scheme. The entire duty along with interest stands paid. The delay in payment warrants penalty, however, the exorbitant amount of penalty as imposed by the Original Authority is not warranted. We hold that the decision of the Commissioner (Appeals) in reducing the penalty to Rs. 75,000/- is reasonable and does not warrant interference. In the light of the above, the appeal by the Department is rejected.

(Dictated and pronounced in the open Court on the 3rd day of June, 2008)

(JUSTICE S.N. JHA)
PRESIDENT

(M. VEERAIYAN)
MEMBER (TECHNICAL)

Golay