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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 5004/2004 & E C O. NO.02/05 Date 23/07/2008

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 PUSHKAR STEEL PVT LTD Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 502/2008- **Excise** dated 16-7-08

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 PUSHKAR STEEL PVT LTD
   D-23,24,25, UPSIDC, INDL.AREA, JASODHARPUR
   KOTDWAR DISTT. PAURI GARHWAL
2. Adv. Consult
   SH, ALOK ARORA, ADV.,
   82, MISSION COMPOUND,
   SAHARANPUR-247001
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
WEST BLOCK-II, R.K. PURAM, PRINCIPAL BENCH, NEW DELHI,
COURT NO. III

Excise C.O. No. 02 of 2005 Excise Appeal No. 5004 of 2004
[Arising out of Order-in-Original No. 449/CE/MRT-I/2004 dated 05.07.2004 passed by the Commissioner (Appeals), Customs & Central Excise, Meerut-I]

Date of hearing/decision: 11.07.2008

Hon'ble Mrs. Archana Wadhwa, Member [Judicial]
Hon'ble Mr. M. Veeraiyan, Member [Technical]

M Veeraiyan

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-I ...Appellant
[Rep. by Mr. M. M. Singh, DR]

Vs.

M/s Pushkar Steels Private Limited ...Respondent
[Rep. by Mr. Alok Arora, Advocate]

Coram: Hon'ble Mrs. Archana Wadhwa, Member [Judicial]
Hon'ble Mr. M. Veeraiyan, Member [Technical]

FINAL ORDER No. 502/08-Ex.

Per: M. Veeraiyan:

This is an appeal by the Department against the order of the Commissioner (Appeals) No. 449/CE/MRT-I/2004 dated 05.07.2004 by which the Commissioner reduced the penalty imposed by original authority from Rs.53,33,336/- to Rs. 2 lakhs.

2. Heard both sides.

M Veeraiyan

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

(a) The respondent is a manufacturer of M.S. Ingots and was availing the compounded levy scheme prescribed under Rule 96ZO(3)of erstwhile Central Excise Rules, 1944. The annual production capacity for the year 1998-99 was fixed as 12800 MT and the duty liability as Rs. 6,66,667/- per month.

(b) The assessee claimed that the actual production in their factory was 8279.725 MT only and that they were eligible to pay the duty based on actual production under Section 3A(4) of the Central Excise Act, 1944 paying duty on such basis during the disputed period namely 98-99.

(c) The various manufacturers have been disputing the manner of determination of duty liability and the matter got finally disposed of that the duty has to be paid only in terms of Rule 96ZO(3), by the decisions of the Hon'ble Supreme Court in the case of Union of India vs. Supreme Steel & General Mills & Ors. Reported in 2001 (133) ELT 513 (SC) and CCE vs. Venus Castings (P) Ltd., reported in 2000 (117) ELT 273 (SC).

(d) Consequent to the declaration of law by the Hon'ble Supreme Court, they paid the entire duty involved along with interest in March 2000.

(e) The original authority confirmed the differential duty amounting to Rs 20,00,000/-and ordered adjustment of the amount paid in March 2000 and imposed a penalty of RS53,33,336/-.

(f) On appeal, the Commissioner while confirming the differential duty and the interest, reduced the penalty imposed by original authority from Rs.53,33,336/- to Rs. 2 lakhs.

4. Learned DR submits that the order of the Commissioner reducing the penalty to Rs. 2.5 lakhs is contrary to specific provision of the law. Learned DR relies on the decision of the Hon'ble High Court of Allahabad in the case of Pee Aar Steels (P) Ltd., vs. CCE, Meerut reported in 2004 (170) ELT 406 (All.).

5. Learned Advocate for the respondent relies on the decision of the Honble High Court of Punjab and Haryana in the case of K.C. Alloys and Steel Castings 2006(206)ELT 1183(P&H) wherein it has been held that penalty prescribed under Rule 96ZO has to be considered as maximum and discretionary.

6. We have carefully considered the submissions made from both sides. We find that this is not a case of clandestine removal or a case of total non-payment of duty. It was claimed that duty as per actual production has been paid and the rest was not been paid due to dispute prevailing in the entire industry as a whole and this has happened during the initial days the new mode of levy. Law got settled by the Hon'ble Supreme Court in the subsequent years. The short levied duty was reportedly paid along with interest at applicable rates (which are claimed to be of penal in nature being substantially higher than the prevailing market interest). In the facts and circumstances of this case, no mens rea could be attributed. The decision of the Honble High Court of Punjab and Haryana in the case of K.C. Alloys and Steel Castings 2006(206)ELT 1183(P&H) wherein it has been held that penalty prescribed under Rule 96ZO has to be considered as maximum and discretionary, shall be applicable to the facts of this case.. Under these circumstances, the reduction of penalty from Rs.53,33,336/- to Rs. 2 lakhs by Commissioner (Appeals) cannot be held unjustified.

7. Appeal by the Department is, therefore, rejected.

[Operative portion of the order was pronounced in the open Court].

16/7/08

[Archana Wadhwa]
Member [Judicial]

15/7/08

[M. Veeraiyan]
Member [Technical]

[Pant]