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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

ꞋIo. E/4409/2004 - EX[DB] Date 10/11/2008

Ꞌssꞌ t Registrar
C.E.S.ꞋA.T, New Delhi

To :
C.C.E MEERUT
UNIVERSITY ROAD MANGAL PANDAY NAGAR
C.C.E MEERUT

Appellant
Vs
Respondent

M/S AMRIT VARSHA ISPAT(P) LTD

I am directed to transmit herewith a certified copy of **Final order No**. 849/2008- **EX[DB]** dated 27-8-08

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 AMRIT VARSHA ISPAT(P) LTD
DHALWALA, MUNI KI RETI RISHIKESH
2. Adv. / Consult SH. ALOK ARORA, ADV.,
OPP. TELEPHONE EXCHANGE,
MISSION COMPOUND, SAHARANPUR-247001
3 S.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 - 3
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
13 Taxindiaonline.com Pvt.Ltd. B-XI/8183.Vasant Kunj. New Delhi - 110070
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-1
15 Office Copy
16 Guard file

Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. II
Excise Appeal No. 4409 of 2004

[Arising out of the Order-in-Appeal No. 398/CE/MRT-I/ 2004 dated 04/06/2004 passed by The Commissioner (Appeals), Central Excise, Meerut-I.]

For Approval and signature :
Hon'ble Shri S.S. Kang, Vice President
Hon'ble Shri Rakesh Kumar, 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? :

2. Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? :

3. Whether their Lordships wish to see the fair copy of the order? :

4. Whether order is to be circulated to the Department Authorities? :

CCE, Meerut — Appellant

Versus

M/s Amrit Varsha Ispat (P) Ltd. — Respondent

Appearance

Shri V. Choudhary, Authorized Representative (DR) – for the appellant.

Shri Alok Arora, Advocate – for the Respondent.

CORAM:**Hon'ble Shri S.S. Kang, Vice President**
Hon'ble Sh. Rakesh Kumar, Member (Technical)

DATE OF HEARING : 27/08/2008.

FINAL Order No. 845/08-EX Dated : ____________

Per. S.S. Kang :-

Heard both sides. The revenue filed this appeal against the impugned order, whereby penalty imposed under Rule 96ZO (3) was reduced from Rs. 67,50,000/- to Rs. 4,00,000/-.

2. Respondent are working under the compounded levy scheme and they are liable to pay the duty as fixed by the Commissioner of Central Excise on due dates. In certain cases, the duty has been paid after the due dates along with interest. The Commissioner (Appeals) after taking into consideration the facts and circumstances of the case and reasons for delay for payment of duty reduced the penalty.

3. Revenue contention in the present appeal is that as per the provisions of Rule 96ZO (3), the penalty equal to the amount of duty is mandatory penalty and Commissioner

(Appeals) has no power to reduced the penalty, therefore, the Commissioner (Appeals) has wrongly reduced the penalty.

4. Respondents submitted that the Hon'ble High Court of Uttarakhand at Nainital in their own case reported in **2007 (79(R.L.T. 801 (Nainital)**, where the same issue ~~has been~~ raised by the revenue held that penalty equal to duty is not mandatory condition except where there is element of mensrea. The respondent also relied upon the decision of Hon'ble Punjab and Haryana High Court in the case of **CCE, Ludhiana vs. K.C. Alloys & Steel Castings** reported in **2006 (206) E.L.T. 1183 (P & H)** to submit that penalty prescribed under 96ZO (3) is maximum and discretionary.

5. In this case, the issue is whether the penalty provided under Rule 96ZO (3) under Central Excise Rules ~~are~~ ~~minimum~~ ~~and~~ there is ~~no~~ discretion in the authorities to lesser ~~the~~ amount of penalty. This issue is now settled by the Hon'ble Punjab and Haryana High Court in the case of K.C. Alloys & Steel Castings (Supra). Hon'ble High Court held that since element of mens rea is not required, to be proved for exercise of jurisdiction under Rule 96ZO (3), quantum of

penalty prescribed therein has to be read in maximum and discretionary and the discretion is to be exercised judiciary having regard to the facts situation of a given case. The amount of duty involved, and the reasons of delay and other relevant circumstances may have to be kept in view of exercise discretion. Further, we find that in respondent's own case, the Hon'ble Uttarakhand High Court in the reference filed by revenue has taken the same view. In view of the above decisions, we find no ground to interfere with the quantum of penalty imposed by the Commissioner(Appeals). The appeal is dismissed.

(Dictated and pronounced in open court)

(S.S. Kang)
Vice President

(Rakesh Kumar)
Member (Technical)

PK