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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/5382/2004 - EX[DB] Date 17/03/2009

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

To :
C.C.E.COMMISSIONERATE CHANDIGARH
C.R. BUILDING,SEC-17-C CHANDIGARH

C.C.E.COMMISSIONERATE CHANDIGARH — Appellant

Vs

M/S TWENTY FIRST CENTURY STEELS LTD. — Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 228 2009 EX[DB] dated 26-2-09

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 TWENTY FIRST CENTURY STEELS LTD.
MANDI GOBINDGARH
2. Adv. / Consult SH. ATUL GUPTA, B-1/1289-A, VASANTKUNJ N. DELHI-70
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 - 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 15
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

COURT – III

CENTRAL EXCISE APPEAL NO. 5382 OF 2004

[Arising out of Order-in-Appeal No. 573/CE/CHD/04 dated 30.07.2004 passed by the Commissioner (Appeals) Central Excise, Chandigarh]

For approval and signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)
Hon'ble Mr. P.K. Das, Member (Judicial)

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?	No.
3.	Whether their Lordships wish to see the fair copy of the order?	
4.	Whether order is to be circulated to the Departmental authorities?	Yes

CCE, Chandigarh — Appellant

Vs.

M/s. Twenty First Century Steels Ltd., — Respondent

Appearance:

Shri B.S. Suhag, D.R., for the Revenue,
Shri Atul Gupta, C.S., for the respondent

Coram:

Hon'ble Mr. M. Veeraiyan, Member (Technical);
Hon'ble Mr. P.K. Das, Member (Judicial),

Date of hearing/decision: 26th February, 2009

FINAL ORDER NO. 228/09-EX dated _________

Per P.K. DAS:

Revenue filed this appeal against Order-in-appeal No. 573/CE/CHD/04 dated 30.7.2004.

2. After hearing both sides and on perusal of the records we find that the issue involved in this appeal is demand of duty and imposition of penalty under Compounded Levy Scheme under Section 3A of Central Excise Act, 1944, for the period September, 1997 to March, 2000. By letter dated 11.3.2003 the Suptd., Central Excise informed the respondents that they had failed to discharge their duty liability within the stipulated period and, hence, they are liable to pay penalty of Rs. 1,25,00,004/- in terms of Rule 96ZO(3) of the erstwhile Central Excise Rules, 1944. The respondents challenged this letter before the Commissioner (Appeals). By the impugned order, Commissioner (Appeals) set aside the penalty following the Larger Bench decision of the Tribunal in the case of CCE, Delhi vs. Machino Montell (I) Ltd., reported in 2004 (62) RLT 709 whereby it has been held that if duty is paid before issuance of the show cause notice, penalty cannot be demanded. It is also observed that no show cause notice, either for recovery of duty or penalty, had been issued. Hence, Revenue filed this appeal.

3. Learned D.R. submits that the issue of imposition of penalty equivalent to the amount of duty for delayed payment of has been settled by the Hon'ble Supreme Court in the case of UOI vs. Dharmendra Textile Processors, reported in 2008 (231) ELT 3 (SC). He also submits that the Larger Bench decision of the Tribunal is overruled by the Hon'ble Punjab & Haryana High Court.

4. We find that the Commissioner (Appeals) passed the order following the decision of the Larger Bench of the Tribunal in the case of Machino Montell (I) Ltd. which has been over ruled by the Hon'ble Punjab & Haryana High Court. We also noticed that the Commissioner (Appeals) did not go into the merit of the case while setting aside the penalty. At this stage learned D.R. submits that recovery notice has been issued under Section 11 of the Act and, therefore, appeal is not maintainable before the Commissioner (Appeals). We find that all these issues have not been considered by the Commissioner (Appeals). In view of above we set aside the order of Commissioner (Appeals) and remand the matter to the Commissioner (Appeals) to decide afresh after affording reasonable opportunity of personal hearing to the respondents. Parties are at liberty to take all points before the Commissioner (Appeals).

(Dictated & pronounced in the Open Court.)

(M. VEERAIYAN)
MEMBER (TECHNICAL)

(P.K. DAS)
MEMBER (JUDICIAL)

RK