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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/4227/2004 - EX[DB] E/CO/351/2004
E/4236/04

Date 11/11/2009

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

To :
C.C.E. MEERUT-I (VICE VARSA)
UNIVERSITY ROAD, MANGAL PANDEY NAGAR,
MEERUT
C.C.E. MEERUT-I

Appellant
Vs
Respondent

M/S BARNALA STEEL INDS. LTD.

I am directed to transmit herewith a certified copy of **Final order No. 885-886/ 2009 EX[DB]** dated 27-10-09 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 BARNALA STEEL INDS. LTD.
VILL. VEHLANA,DISTT. MUZAFFARNAGAR
2. Adv. / Consult
MR.AALOK ARORA, ADVOCATE
82-MISSION COMPOUND, SAHARANPUR-247001 (U.P.)

3 C.D.R
~~4 J.C.D.R.~~
5 Bar association, CESTAT, New Delhi
6 Director Publications, Customs, Excise. I.P. Estate, New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11 M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
12 Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
13 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15 LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
16 Office Copy
17 Guard file
18. HON'BLE PRESIDENT

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
BENCH-DB

COURT - I

Date of Hearing:27.10.2009
Date of decision:27.10.2009

Excise Appeal No. E/4227/04 with
Excise Cross Objection No.E/CO/351/04

[Arising out of Order-in-Appeal No.358/CE/MRT-I/2004 dated 21.5.2004 passed by the Commissioner (Appeals), Central Excise, Meerut-I].

Commissioner, Central Excise, Meerut-I ...Appellant

Vs.

M/s. Barnala Steel Industries Ltd. ... Respondent

Present for the Appellant : Shri Surender Shah, DR
Present for the Respondent : None

Excise Appeal No.E/4236/04

[Arising out of Order-in-Appeal No.358/CE/MRT-I/2004 dated 21.5.2004 passed by the Commissioner (Appeals), Central Excise, Meerut-I].

M/s. Barnala Steel Industries Ltd. ...Appellant

Vs.

Commissioner , Central Excise, Meerut-I ... Respondent

Present for the Appellant : None
Present for the Respondent : Shri Surender Shah, DR

For approval and signature:

Hon'ble Mr. Justice R.M.S. Khandeparkar, President
Hon'ble Mr.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?	Yes
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3	Whether Their Lordships wish to see the fair copy of the Order?	Yes
4	Whether Order is to be circulated to the Departmental authorities?	Yes

Coram: Hon'ble Mr.Justice R.M.S. Khandeparkar, President
Hon'ble Mr. Rakesh Kumar, Member (Technical)

Final **ORAL ORDER NO.** 885-886/09 **DATED:27.10.2009**

PER: JUSTICE R.M.S.KHANDEPARKAR

Shri Surendra Shah, SDR present for the Department. None present for the assessee.

2. Since common question of law and facts arise in both these appeals, they were heard together and are being disposed of by this common order.

3. The appeal No.4227 is at the instance of the Revenue Department, whereas the appeal No.4236 is at the instance of the assessee against the order dated 21st May, 2004 passed by the Commissioner (Appeals). By the impugned order, the Commissioner (Appeals) has allowed the appeal filed by the assessee against the imposition of penalty of the amount equal to the amount of duty demanded under order dated 22nd September 1999 passed by the Dy. Commissioner, Muzafarnagar. The Commissioner (Appeals) by the impugned order has reduced the said penalty to Rs.1.00 Lakh on the ground that though there was delay in payment of duty it was due to financial constrains and there was no intention to evade payment of duty as such.

4. It is the case of the Department that considering the provisions of law comprised under the Rule 96ZP of the Central Excise Rules 1944, the appellate authority had no discretion in

the matter of imposition of penalty and, therefore, could not have interfered with the order passed by the lower authority imposing the penalty equivalent to the amount of duty payable by the party. On the other hand, it is the case of the assessee that since the assessee had paid the entire duty amount, though late but prior to issuance of show-cause-notice, there was no justification for imposition of penalty, as the assessee did not disclose any intention to evade payment of duty.

5. Having been heard the ld. DR for the Department and on going through the records placed before us, and considering the contentions on behalf of the Department that the law as regards imposition of penalty being settled by the Apex Court in the matter of Union of India vs. Dharamendra Textile Processors reported in 2008 (231) ELT 3 (S.C.), the Department is apparently justified in contending that the Commissioner (Appeals) does not have any its discretionary power to modify and reduce the quantum of penalty in comparison to the quantum of duty liability fixed by the lower authority. The records apparently disclose that the proceedings were initiated in terms of the provisions of law comprises under Rule 96 ZP of the said rules. Apart from the fact that the said rules nowhere provide any discretion to the authorities in the matter of quantum of penalty and the same clearly prescribe that the penalty should be equivalent to the amount of duty payable by the party, in the facts and circumstances of the case, the Commissioner (Appeals) on assumption that there was no intention to evade payment of

duty could not have reduced the quantum of penalty. Indeed, as submitted by the ld. DR, the law in this regard is well settled by the decision of the Apex Court in the matter of Dharmendra Textile Processors and considering the same, the impugned order passed by the Commissioner (Appeals) in relation to the penalty amount cannot be sustained and is liable to be set aside and the order of the lower authority in that regard to be restored. In the result, the appeal filed by the Department succeeds whereas the appeal filed by the assessee is dismissed. Both the appeals are accordingly disposed of in the above terms, with consequential relief.

(JUSTICE R.M.S.KHANDEPARKAR)
PRESIDENT

(RAKESH KUMAR)
MEMBER (TECHNICAL)

Anita