

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

Appeal No. E/3836/2005-SM[BR]

Date 09/01/2008

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

To :  
M/S UNITED IRON & STEEL ROLLING MILLS  
AMLOH ROAD, MANDI GOBINDGARH

M/S UNITED IRON & STEEL ROLLING MILLS

Appellant  
Vs  
Respondent

THE COMMISSIONER OF CENTRAL EXCISE  
CHANDIGARH

I am directed to transmit herewith a certified copy of Final order No. 33/2008-SM[BR] dated 5-11.2007  
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944

  
Assistant Registrar  
(SM Appeal Branch)

**Copy to :**

1. Respondent  
THE COMMISSIONER OF CENTRAL EXCISE  
CHANDIGARH  
PLOT NO 19, SECTOR 17-  
C, CHANDIGARH
2. Adv. / Consult SHRI. BIPIN GARG ADV.  
B-1/1289-A, VASANT KUNJ NEW DELHI-110070
3. S.D.R.
- ~~4. J.C.B.R.~~
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, marg. 43, saket, New
7. M/s Centax Publications (P) Ltd., 1512-E, Bhishm Pitamah
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301
9. R.Venkatraman Constt. 44-B, S.Suncity, Ghaziabad -
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh,
12. Co, Law Institution
13. TAX INDIA, B-XI/8183, Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

  
Assistant Registrar  
(SM 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. III**

**Excise Appeal No. 3836 of 2005 – SM (BR)**

[Arising out of the Order-in-Appeal No. 392/CE/CHD/2005 dated 28/10/2005 passed by The Commissioner of Central Excise (Appeals), Chandigarh.]

For Approval and signature :

**Hon'ble Mr. P.K. Das, Member (Judicial)**

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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?

: } yes

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M/s United Iron & Steel Rolling Mills

Appellant

Versus

CCE, Chandigarh

Respondent

**Appearance**

Shri Bipin Garg, Advocate – for the appellant.

Shri A.K. Rastogi, Authorized Representative (SDR) – for the Respondent.

CORAM : Hon'ble Shri P.K. Das, Member (Judicial)

**DATE OF HEARING : 05/11/2007.**

Final Order No. 33 | 08 JM (BR) Dated : 05/11/07

**Per. P.K. Das :-**

The appellant filed this appeal against imposition of penalty of Rs. 93,025.00 under Rule 96 ZP (3) of the erstwhile Central Excise Rules 1944. The relevant facts of the case in brief are that the appellants were liable to discharge their duty liability of Rs. 93,025.00 within 10<sup>th</sup> March 1999. In this instant case, the appellant discharged their duty liability on 12<sup>th</sup> March 1999 along with interest. The adjudicating authority imposed penalty of equal amount of duty in terms of Rule 96 ZP (3) of the said rules.

2. The learned advocate on behalf of the appellants submits that liability to pay penalty in terms of Clause 2 of proviso to 96 ZP (3) of the said rules is "on the outstanding

amount of duty of the appellant at the end of such month.” He submits that there was no outstanding duty liability of the appellant at the end of such month and therefore no penalty is not imposable. He further submits that the finding of the Commissioner (Appeals) is that the delay is to be deliberate with the intention to evade duty is without any basis.

3. The learned DR reiterates the findings of the Commissioner (Appeals). He submits that Clause 2 of proviso to Rule 96 ZP (3) liability to pay interest on the outstanding amount of duty as on 10<sup>th</sup> day of such month. He submits that the adjudicating authority rightly imposed penalty on the outstanding amount of duty as on 10<sup>th</sup> day of such months.

4. After hearing both the sides and on perusal of the records, I find force in the submission of the learned advocate. For the proper appreciation of the case, the relevant portion of Rule 96 ZP (3) is reproduced below,

“Provided also that where a manufacturer falls to pay the whole of the amount of duty payable for any month of the 10<sup>th</sup> day of such month, he shall be liable to pay :-

- (i) the outstanding amount of duty along with interest thereon at the rate of 18% per annum calculated for the period from the 11<sup>th</sup> day of such month till the date of actual payment of the outstanding amount ; and
- (ii) a penalty equal to the amount of duty outstanding from him at the end of such month or five thousand rupees, which ever is greater.”

5. On plain reading on the proviso of the said rules, it is seen that the manufacturer shall be liable to pay the interest on the outstanding amount of duty from the 11<sup>th</sup> day of such month. Regarding the payment of penalty, it appears that he shall be liable to pay penalty on the amount of duty outstanding from him at the end of such month. Thus, the liability to pay of penalty is on the amount of duty outstanding from the manufacturer at the end of such month. In the present case, it is seen there is no outstanding of duty from the appellant at the end of such month, as the appellant discharged the duty liability on 12<sup>th</sup> of such month instead of 10<sup>th</sup>. So, the imposition of the penalty under clause 2 on provision to rule 96 ZP (3) of the said rules is not sustainable. Further, the appellant discharged the duty liability on 12<sup>th</sup>

instead of 10<sup>th</sup> with interest and therefore the findings of the Commissioner (Appeals) that the delay is to be deliberate with the intention to evade duty is totally unjustified. Hence, the impugned order is set aside. The appeal is allowed with consequential relief.

(Dictated and pronounced in open court)

**(P.K. Das)**  
**Member (Judicial)**

PK