

**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/115 /2006

Date 24/01/2008

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

To :  
CCE LUDHIANA  
CCE LUDHIANA

CCE LUDHIANA

M/S. ADHUNIK ALLOYS P. LTD.

Appellant  
Vs  
Respondent

I am directed to transmit herewith a certified copy of Final order No. 147/2008-SM[BR] dated 3.12.2007  
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944

  
Assistant Registrar  
(SM Appeal Branch)

**Copy to :**

1. Respondent  
M/S. ADHUNIK ALLOYS P. LTD.  
VILL: GARHI TARKHANA, P.O. MACHHHIWARA,  
DIST. LUDHIANA (PB)
2. Adv. / Consult MR. KAMALJEET SINGH ADV.  
J-144, PATEL NAGAR-I GHAZIABAD [U.P]
3. S.D.R.
4. ~~J.C.D.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 AND SERVICE TAX APPELLATE  
TRIBUNAL, R.K. PURAM, W.B. NO.2, PRINCIPAL BENCH  
NEW DELHI, COURT NO. III**

**Excise Appeal No. 115 of 2006 –SM (BR)**

[Arising out of order in appeal No. 40/CE/APPL/LDH/2005 dated 28.10.2005  
passed by the Commissioner (Appeals), Central Excise, Ludhiana]

**Date of Hearing/ Decision: 03.12.2007**

**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 should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? | : | M. |
| 3. Whether Their Lordships wish to see the fair copy of the Order?   | : |    |
| 4. Whether Order is to be circulated to the Departmental authorities?  | : |    |
- 

CCE, Ludhiana

Appellants

[Rep. by Mr. S. Gautam, Authorised Representative (DR) for the appellant]

Vs.

Adhunik Alloys Pvt. Ltd.,

Respondent

[Rep. by Mr. Kamaljeet Singh, Advocate for the respondent]

**CORAM: Mr. P.K. Das, Member (Judicial)**

*Final* **ORDER** No. 147 /08-SM(BR)

**Per P.K. Das:**

The Revenue filed this appeal against order of the Commissioner (Appeals), whereby penalty and interest were set-aside.

2. The relevant facts of the case in brief are that the respondent are engaged in the manufacture of non-Alloy steel ingots and Alloy steel ingots classifiable under sub-heading Nos. 7206.90 & 7224.00 of the schedule to the Central Excise Tariff Act, 1985.

3. The respondent failed to pay duty within the stipulated period, under rule 8 of Central Excise Rules, 2002. Show cause notice dated 15.10.2004 was issued proposing for imposition of penalty under Rule 26 of the Central Excise Rules, 2002 alongwith interest. The adjudicating authority imposed penalty under Rule 26 of the Central Excise Rules and payment of interest @ Rs. 1,000/- per day for default under rule 8 of the Rules. Commissioner (Appeals) set-aside the penalty and interest because the respondent deposited the duty before issue of show cause notice. Revenue filed this appeal against the order of the Commissioner (Appeals).

4. Learned DR reiterates the grounds of appeal. He submits that the respondent contravened the provisions of Rule 8 and therefore imposition of penalty and payment of interest are justified. He submits that the case law relied upon by the Commissioner (Appeals) are inapplicable herein as it is a case of contravention of rule 8 of Rule 2002.

5. Learned Advocate on behalf of the respondent submits that the Hon'ble Rajasthan High Court in the case of Lucid Colloids Limited vs. Union of India reported in 2006 (200) ELT 377 (Raj.) declared Rule 8(3) of Central Excise Rules, 2002 as ultra vires. He further submits that the Tribunal in the case of Condor Power Products P. Ltd., vs. CCE, Faridabad reported in 2007 (210) ELT 137 (Tri. Del.) held that penalty is not imposable for delay in payment of duty under Rule 8 of Central Excise Rules, 2002.

6. After hearing both the sides and on perusal of the records, the Tribunal in the case of Condor Power Products P. Ltd., (supra) following the decision of the Hon'ble Rajasthan High Court held that there is no scope for the Revenue authorities to work out the interest liability @ Rs. 1,000/- per day and interest, as ordered, is required to be worked out @ 2% per month (i.e. 24% per annum). It has further been held that penalty imposed under Rule 25 of the rules is set-aside. In this case, penalty is imposed under Rule 26 of Central Excise Rules, 2002 of equal amount of duty. The Tribunal in the said case observed that the assessee

disclosed the transaction by filing returns, liability to pay duty was never in dispute and there is no intention to evade payment of duty. So, the penalty under Rule 25 of the Central Excise Rules, 2002 is not applicable. Respectfully following the decision of the Tribunal in the case of Condor Power Products P. Ltd., (supra), the impugned order is modified inasmuch as the penalty is not imposable under Rule 26 of the Rules, 2002 and the order of the Commissioner (Appeals) in this regard is upheld. But, the recovery of interest under Rule 8 (3) is confirmed subject to the modification as @ 2% per month. The order of the Commissioner (Appeals) is modified in the above terms.

(Order dictated and pronounced in the open Court)

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

[Pant]