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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/2384 -2385 / 2006 AND E / 3116 – 3118 / 2006 –SM[BR] Date 29/09/2008

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

To :
C.C.E. KANPUR
117/7, SARVODAYA NAGAR, KANPUR 208005.

C.C.E. KANPUR Appellant

Vs

M/S HARI OM STEEL IND Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1332 – 1336 / 2008 - **SM[BR]** dated 13.8.2008 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 HARI OM STEEL IND
   SHRI A.H.ANSARI AUTHORISED SIGNATORY
   1021,BEHIND INDL ARREA,BIJOLI JHANSI
2. Adv. / Consult SHRI A.K. DIXIT ADV.
   113 / 145 SWARUP NAGAR
   KANPUR- 208002[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. 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
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Assistant Registrar
(SM Appeal Branch)

N THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Excise Appeals Nos.2384-2385/2006-SM (BR) &
Excise Appeals Nos3116-3118/2006-SM (BR) &

[Arising out of Order-in-Appeal No.126-127/CE/Appl/Knp/06 dated 13.03.2006 in Appeals Nos.2384, 3116 & 3118 and Order-in-Appeal No.124-125/CE/APPL/KNP/06 dated 13.03.06 in Appeal No.2385, 3117 passed by the Commissioner of Central Excise (Appeals), Kanpur]

Date of Hearing/ Decision:13.08.2008

For approval and signature:

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

1. Whether Press Reporters may be allowed to see 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? : N.
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.

Appeals Nos.E/2384 & 2385/2006-SM (BR)

CCE, Kanpur ....Appellants
[Rep. by Shri Sansar Chand, DR]

Vs.

M/s. Hari Om Steel Industries ...Respondent
[Rep. by Shri A.K. Dixit, Advocate]

Appeals Nos.E/3116-3118/2006-SM (BR)

(1) M/s. Hari Om Steel Industries ...Appellants
(2) Shri A.H. Ansari, Authorised Signatory

Vs.

CCE, Kanpur ...Respondent

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

Final Order No. 1332-1336/08-SM(BR)/Dated:13.08.2008

Per P.K. Das:

Common issue is involved in these appeals and, therefore, all the appeals are being taken up together for disposal.

2. The relevant facts of the case, in brief, are that M/s. Hari Om Steel Industries (in short, the assessee) is engaged in the manufacture of Iron & Steel bars classifiable under sub-Heading No.7214.90 of the Schedule to the Central Excise Tariff Act, 1985. The Central Excise Officers visited the factory of the assessee on 25.09.2004 and 25.01.2005. The Officers verified the stocks of finished goods and raw materials. The Central Excise Officers detected shortage of the finished goods on 25.09.2004 and shortage of raw materials of Sponge Iron on 25.01.2005. The assessee deposited the duty on both the occasions upon detection of the shortages by the Central Excise Officers. In respect of visit on 25.9.2004, the Adjudicating Authority confirmed the demand of duty of Rs.53,647/- and appropriated the said amount as deposited by them. He also imposed penalty of equal amount under Section 11 AC of Central Excise Act, 1944 and a penalty of Rs.10,000.00 on the assessee and also imposed a

penalty of Rs.10,000.00 on Shri Mukesh Bansal, Partner of the assessee. In the case of visit on 25.01.2005, the Adjudicating Authority confirmed demand of duty of Rs.98,126.00 and appropriated the said amount as deposited by them and also imposed penalty of equal amount under Section 11 AC of the Act on the assessee and also imposed a penalty of Rs.25,000.00 on Shri S.H. Ansari, Authorised Signatory of the assessee.

3. The Commissioner of Central Excise (Appeals) modified both the Adjudication Orders in so far as penalties were reduced from Rs.98,126.00 to Rs.25,000.00 and from Rs.53,647.00 to Rs.12,500.00 on the assessee. He also set aside the penalty on Shri Mukesh Bansal, Partner and penalty on Shri S.H. Ansari was reduced from Rs.25,000.00 to Rs.10,000.00. The Revenue, the asseseee and Shri S.H. Ansari filed these appeals against the impugned order.

4. After hearing both the sides and on perusal of records, it is seen that the Revenue filed appeals against the assessee for imposition of mandatory penalty of equal amount of duty under Section 11 AC of the Central Excise Act, 1944 on the assessee. On the other hand, the assessee filed appeals for setting aside penalties under Section 11 AC of the Act and Rule 25 of the Rules.

5. Ld. DR on behalf of the Revenue submits that Shri Mukesh Bansal, Partner of the assessee in his statement dated 25.09.2004 admitted the clandestine removal of the finished goods and, therefore,

imposition of mandatory penalty of equal amount of duty is under Section 11 AC and Rule 25 of the Rules are justified.

6. Ld. Advocate on behalf of the assessee submits that there is no evidence of clandestine removal of the goods and, therefore, imposition of penalty under Section 11 AC of the Act is not warranted. He also submits that the statement of partner has been misread and penalties are liable to be set aside. He relied upon the decision of the Hon'ble Delhi High Court in the case of K.P. Pouches (P) Ltd. Vs. Union of India & Anr. reported in 2008 (85) RLT 483 (Delhi).

7. After hearing both the sides and on perusal of the records, I find that the Partner of the assessee firm in his statement dated 25.09.2004 admitted the shortage of finished goods due to clandestine removal, without issue of central excise invoice. So, I do not find any force in the submission of the ld. Advocate. The Adjudicating authority rightly imposed penalty under Section 11 AC of the Act. The Hon'ble Delhi High Court in the case of K.P. Pouches (P) Ltd. (supra) held that where entire duty is paid before issue of show cause notice, penalty equal 25% of duty is leviable and adjudication order imposing penalty equal amount of duty is illegal, though penalty is not paid within 30 days of passing of Adjudication Order. In view of that, I find that the Commissioner (Appeals) rightly reduced the penalty to 25% of duty approximately. Hence, I do not find any infirmity in the order of the

Commissioner (Appeals). Accordingly, the appeals filed by the Revenue and assessee are liable to be rejected.

8. Regarding the appeal of Shri A.H. Ansari, Authorised Signatory of the assessee against penalty of Rs.10,000.00, I find that the Commissioner (Appeals) set aside the penalty on the Partner of the assessee and, therefore, the penalty on the Authorised Signatory, is not justified.. I also note that the Revenue is not challenging the order of the Commissioner (Appeals) against setting aside of penalty on the Partner of the assessee. So, I find that the penalty on the Authorised Signatory is not warranted. Accordingly, penalty on Shri A.H. Ansari is liable to be set aside.

9. To sum up, the appeals filed by the Revenue and assessee are rejected. The appeal filed by the Authorised Signatory, Shri A.H. Ansari is ~~liable to be set as~~allowed with consequential relief.

(Order dictated & pronounced in open court on 13.08.2008).

(P.K. Das)
Member (Judicial)

Ckp.