TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

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/3587/2006 – SM[BR] Date 31/10/2008

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

To :
C.C.E.LUCKNOW
7-A, ASHOK MARG, LUCKNOW.

C.C.E.LUCKNOW Appellant
Vs
M/S SHANKAR TALA BHANDAR(P)LTD Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1397 / 2008- **SM[BR]** dated **22.10.2008**

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 SHANKAR TALA BHANDAR(P)LTD
MANZOOR GARHI
ALIGARH.
2. Adv. / Consult
NONE;------

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
15 Office Copy
16 Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, NEW DELHI
COURT NO. II

Excise Appeal No. 3587 of 2006-SM

(Arising out of Order-in-Appeal No. 90-CE/2006 dated 12.7.2006 passed by the Commissioner (Appeals), Central Excise & Service Tax, Lucknow)

For approval and signature

HON'BLE MR. S.S. KANG, VICE PRESIDENT

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 Departmental authorities.	

CCE, Lucknow — Appellant

Vs.

M/s Shankar Tala Bhandar (P) Ltd. — Respondent

Appearance:
Shri S.K. Pandey, DR - For appellant
None - For respondent

CORAM:
HON'BLE MR. S.S. KANG, VICE PRESIDENT

Date of Hearing: 22.10.2008

Final Order No. 1397/08-SM(BR) dated 22.10.08

Per S.S. Kang:

When the case was called none appeared on behalf of the respondent in spite of notice. As the last date of hearing also the appellants were unrepresented, therefore, the appeal is being taken up in the absence of respondent.

2. Heard ld. DR. The Revenue filed this appeal against the impugned order whereby Commissioner (Appeals) confirming the duty, however, set aside the penalty imposed under Rule 25 of Central Excise Rules read with Section 11AC of Central Excise Act.

3. The brief facts of the case are that the respondents are engaged in the manufacture of M.S. bars and rods and were working under the Cenvat Credit Scheme. The Revenue officers on 2.2.2005 visited the factory premises of the respondent and on physical verification, it was found there was a shortage of MS angles and sections weighing 25.100 MTs. involving Central Excise duty of Rs.55,300/-. The respondent could not explain the shortage hence show-cause notice was issued for confirmation of demand and imposition of penalty. The adjudicating authority confirmed the demand and imposed penalty whereas the Commissioner (Appeals) on appeal filed by the respondent set aside the penalty on the

ground that duty has been paid prior to issuance of show-cause notice.

4. The Revenue relied upon the decision of Hon'ble Punjab & Haryana High Court in the case of **CCE Vs. Omkar Steel Tubes (P) Ltd.** reported in 2008 (221) ELT 200. The contention is that mere fact that duty has been paid before issuance of show-cause notice could not result into in application of Section 11AC and the penalty could still be imposed as long as provisions of Section 11AC are satisfied.

5. In the present case, excisable goods were found short and as the respondents were working under the self assessment procedure, therefore, is duty bound to explain the shortage. The appellant failed to explain the shortage, therefore, the demand was confirmed on the ground that the goods were cleared without payment of duty. In this situation, when the duty has not been paid or short paid in respect of contravention of the provisions of Central Excise Act and Rules, therefore, the appellants are liable for penalty under Section 11AC. The impugned order

whereby the penalty is set aside is not sustainable hence set aside and the order passed by the adjudicating authority is restored. The appeal is allowed.

(Dictated & pronounced in open Court)

(S.S. KANG)
VICE PRESIDENT

RM