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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/3972/2006-SM[BR] Date 04/06/2008

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

To :
C.C.E. CHANDIGARH
C.R. BUILDING,
SECTOR 17-C, CHANDIGARH
C.C.E. CHANDIGARH Appellant

Vs

M/S AMAN ALLOYS (P) LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 847 /2008 –SM[BR] dated 19.5.2008 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 AMAN ALLOYS (P) LTD.
   G.T.ROAD, SIRHIND SIDE, MANDI GOBINDGARH.
2. Adv. / Consult SHRI K.K. ANAND ADV.
   A-5, BASEMENT LAJPAT NAGAR NEW DELHI-110024

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 Delhi -
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 60017
13. Taxindiaonline.com Pvt.Ltd, 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

COURT – II

EXCISE APPEAL NO. 3972/06-SM

[Arising out of Order-in-Appeal No. 875/CE/CHD/06 dated 29.9.2006 passed by the Commissioner (Appeals), Central Excise, Chandigarh]

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?	No
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
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?	No

CCE, Chandigarh — Appellant

Vs.

M/s. Aman Alloys (P) Ltd., — Respondents

Appearance:

Shri B.S. Suhag, Departmental Representative, for the Revenue,
Shri K.K. Sharma, Advocate for the respondents

Coram:

Hon'ble Mr. S.S. Kang, Vice President

Date of Hearing: 19th May, 2008

FINAL ORDER NO. 847/08-SM(BR) dated 19.5.08

Per S.S. Kang:

Heard both sides.

2. Revenue filed these appeals against the impugned order whereby penalty under Section 11AC of the Act was set aside. Contention of Revenue is that in this case there is suppression of facts with intent to evade payment of duty. Hence, penalty under Section 11AC of the Act is impossible, even if duty is paid prior to issuance of show cause notice. Revenue relied upon the decision of the Hon'ble Punjab & Haryana High Court in the case of CCE, Ludhiana vs. Omkar Steel Tubes (P) Ltd., reported in 2008 (221) ELT 200 (P&H).

3. I find that in this case certain goods were found short at the time of visit of officer. There is no explanation given by the respondents regarding shortage of finished goods. This shortage was never communicated to the Department. In these circumstances respondents are liable for penalty. Hon'ble Punjab & Haryana High Court in the case of Omkar Steel Tubes (P) Ltd. (supra) held that penalty can be imposed even if duty has been paid prior to issuance of show cause notice in case of suppression with intent to evade payment of duty. In these circumstances impugned order is set aside and the order passed by the adjudicating authority in respect of penalty is upheld. As the respondent has already paid 25% of penalty along with amount of demand even before issuance of show cause notice, and as per proviso

to Section 11AC of the Central Excise Act, if duty as determined is paid along with penalty within 30 days then the assessee is liable to pay 25% of penalty. In the present case 25% of penalty amount has been paid even prior to issuance of show cause notice. Therefore, deposit of 25% of penalty is sufficient as per provision of Section 11AC. Appeal~~s~~ ~~are~~ is allowed as indicated above.

(Dictated & pronounced in the Open Court.)

(S.S. KANG)
VICE PRESIDENT

Dated 19th May, 2008-05-19
RK