

**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/2563/2006-SM[BR]

Date 05/06/2008

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

To :  
M/S LAXMI ALUMINIUM ENTERPRISES  
C/O DEEPAK CERAMIC & ALLIED PROD. (P) LTD,  
BEHIND I.T.I, MEERUT ROAD, MUZAFFARNAGAR  
M/S LAXMI ALUMINIUM ENTERPRISES

Appellant  
Vs  
Respondent

THE COMMISSIONER OF CENTRAL EXCISE  
MEERUT-I

I am directed to transmit herewith a certified copy of Final order No. 862 /2008-SM[BR] dated 16.1.2008  
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 MEERUT-I

MANGAL PANDEY NAGAR, MEERUT

2. Adv. / Consult MS. REENA KHAIR ADV.

R-163, SECOUND FLOOR GREATER KAILASH PART-I.  
NEW DELHI-110048

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 Publications (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)

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

E/Appeal No.2563 /2006-SM

(Arising out of order in appeal No.34/CE/MRT.I/06 dated 23.3.06 passed by  
the Commissioner (Appeals), Central Excise, Meerut)

For approval and signature:

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

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 ?
3. Whether Their Lordships wish to see the fair copy of the Order ?
4. Whether Order is to be circulated to the Departmental authorities?

M/s Laxmi Aluminium Enterprises

Appellant  
(Rep. by Ms Reena Khair, Advocate)

Vs

CCE, Meerut

Respondent  
(Rep. by Shri Rajmal, DR)

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

Date of Hearing: 16.1.2008

Final Order No. 862/08-SM(RR)

Per P.K. Das:

Heard both the sides and perused the records.

2. The relevant facts of the case, in brief, are that the appellants are engaged in the manufacture of MS Bars, Flats and Angles etc. and had been paying duty under section 3A of Central Excise Act, 1944. By letter dated 12.9.97, the Appellants intimated to the Commissioner of Central Excise proposing to make change in the parameters of the installed machinery. Further, by letter dated 30.9.97, they informed that they have already changed the parameters of the installed capacity. The Commissioner of Central Excise by letter dated 10.3.98, refixed the parameters of the installed capacity and directed the appellants to pay duty with effect from 1.12.1997. Adjudicating Authority confirmed demand of duty of Rs. 1,47,450/- short paid during the period 1.10.97 to 30.11.97 alongwith interest and imposed penalty of equal amount, which was upheld by the Commissioner (Appeals). In the impugned order, Commissioner(Appeals) observed that para 4(2) of Notification No.32/97-CE(NT) dated 1.8.97 issued under Re-rolling Steel Mill Annual Capacity Determination Rule 1997, held that prior approval of the Commissioner is must for making any change in the parameters and date is to be determined by the Commissioner.

3. After hearing both the sides and on perusal of record, Para 4(2) of Notification No.32/97-CE(NT) dated 1.8.97, is reproduced below:-

*“In case a manufacturer proposes to make any change in the installed machinery or any part thereof which tends to change the value of either of the parameters, ‘d’, ‘n’, ‘e’, ‘i’ and ‘speed of rolling referred to in sub-rule (3) of Rule3, such manufacturer shall intimate about the proposed change to the Commissioner of Central Excise in writing, with a copy to the Assistant Commissioner of Central excise, at least one month in advance of such proposed change, and shall obtain the written approval of the*

*Commissioner before making such change. Thereafter, the Commissioner of Central Excise shall determine the date from which the change in the installed capacity shall be deemed to be effective.”*

4. In the present case, it is revealed from the letter dated 10.3.98 of the Assistant Commissioner of Central Excise that the appellants by their letter dated 12.9.97, intimated the Department proposing to change of installed capacity and fixation of Annual Production capacity and to discharge of duty liability to reduce the parameters below 1.10. Further, the appellants vide their letter dated 30.9.97, intimated the Department regarding change in parameters. They had informed that they will start production from 1.10.97. It is further revealed from the letter of the Assistant Commissioner of Central Excise that on 6.12.97, the officers visited the factory. It appears that the said letter dated 10.3.98 was written in the month of December, 1997 with a direction to discharge duty liability effective from 1.12.97 and the letter was signed by the Assistant Commissioner on 10.3.98. The reason for such long delay is not explained. I find that factory was visited by the officers on 6.12.97 and the Assistant Commissioner is directing to discharge duty liability on the change in parameters w.e.f. 1.12.97. Thus it is apparent that there is no basis for determination of the date of the change of parameters by the authority. The Tribunal in the case of Kanishk Steel Industries Ltd Vs CCE, Chennai reported in 2005 (191) ELT 231 held that change specified by the assessee in their letter for change of parameters is relevant date. Para 4(2) of Notification No.32/97-CE(NT) dated 1.8.97 provides that the manufacturer shall intimate to the Commissioner of Central with a copy to the Assistant Commissioner at least one month in advance of

such proposed change. In this case, there is no communication on the part of revenue during the one month of the proposed change of parameters.

5. In view of the above discussion, the change of parameters has to be effective after completion of one month from the date of proposed letter. Accordingly, the impugned order is modified in so far as the date of change of parameters is effective from 12.10.97 instead of 1.12.97 and the demand of duty would be modified accordingly. As the issue involved is interpretation of provision of law and there is no laches on the part of the appellant, imposition of penalty is not warranted. Penalty is set aside. The appeal is disposed of in the above terms.

(Order dictated and pronounced in the open Court).

MPS\*

(P.K. Das)  
Member(Judicial)