

**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/1552/2006-1553/2006-SM[BR]

Date 05/06/2008

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

To :  
C.C.E.LUDHIANA

C.C.E.LUDHIANA

M/S A.K.ALLOYS (P) LTD

Appellant  
Vs  
Respondent

I am directed to transmit herewith a certified copy of Final order No. 867 -868 /2008 -SM[BR] dated 1.2.2008

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

  
Assistant Registrar  
(SM Appeal Branch)

**Copy to :**

1. Respondent

1. M/S A.K.ALLOYS (P) LTD VILL. GOUNSPURA,  
LDH ROAD MALERKOTLA
2. M/S SURENDRA STEEL ROLLING& GENERAL MILLS MALERKOTLA

2. Adv. / Consult SHRI RUPENDER SINGH ADV.

DSK LEGAL, 46, ARADHANA CHANAKAYAPUR NEW DELHI

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)

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE  
TRIBUNAL, R.K. PURAM, W.B. NO.2, PRINCIPAL BENCH  
NEW DELHI, COURT NO. III**

**Excise Appeals No.1552-1553 of 2006-SM (BR)**

[Arising out of Order-in-Appeal No.117 & 118/CE/CHD/2006 dated 20.02.2006 passed by the Commissioner (Appeals) Central Excise, Ludhiana.]

**Date of Hearing/ Decision:01.02.2008**

**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?                                                                    | : |      |
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CCE, Ludhiana

Appellants  
[Rep. by Mr. S. Gautam, DR]

Vs.

1.M/s. A.K. Alloys (P) Ltd.

2.M/s. Surinder Steel Rolling & General Mills

Respondent  
[Rep. by Shri Rupender Singh, Advocate )

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

**Final ORDER NO. 867-268/08-sm(BR) /Dated:01.02.08**

Per P.K. Das:

It appears from the record that by Final order No.919-924/06-SM (BR) dated 15.06.06, the Tribunal dismissed these appeals along with

other appeals filed by the Revenue. Revenue filed an application for rectification of mistake against the Final Order dated 15.06.2006. By Misc. Order No.26/2007-SM (BR) dated 19.01.2007, the Tribunal recalled the Final Order dated 15.06.2006 to the extent it relates to the present Respondents and the appeals were restored to its original numbers.

2. It is seen that the Adjudicating Authority confirmed demand of duty, imposed penalty under Rule 25 of the Central Excise Rules, 2002 and confiscated the seized good with option to redeem the same on payment of fine upon the Respondent No.1 and also imposed redemption fine on the Respondent No.2 (owner of the truck). In the impugned order, the Commissioner (Appeals) set aside the interest, penalty and fine on the Respondent No.1 as the Respondent No.1 deposited the duty before issue of the show cause notice and followed the Larger Bench decision of the Tribunal in the case of CCE Vs. Machino Montell (I) Pvt. Ltd. – 2004 (62) RLT 709 (CESTAT-LB). He also set aside the redemption fine on the Respondent No.2 on the ground that the vehicle cannot be confiscated without issuance of the show cause notice to the owner of the vehicle.

3. Ld. DR on behalf of the Revenue submits that the Larger Bench decision of the Tribunal in the case of Machino Montell (I) Pvt. Ltd. (supra) is over-ruled by the Hon'ble Punjab & Haryana High Court. It is submitted by the Revenue that there is a proposal of confiscation of the truck in the show cause notice.

4. After hearing both the sides and on perusal of records, I find force in the submission of the ld. DR. As the decision of the Larger Bench in the case of Machino Montell (I) Pvt. Ltd. is over-ruled by the Hon'ble High Court, the matter is required to be examined by the Commissioner (Appeals) on merit. As such, the impugned order is set aside and the matter is remanded back to the Commissioner (Appeals) to decide afresh after considering the grounds taken by the Revenue in the appeals. Both the appeals are allowed by way of remand.

Order dictated & pronounced in open court on 1.2.2008.

( P.K. Das )  
Member (Judicial)

Ckp.