

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/3353/2006-SM[BR]

Date 16/06/2008

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

To :
M/S CHAUDHARANA STEELS P LTD
UNIT NO 2 A-48, SATHARIA INDUSTRIAL AREA,
DISTT-JAUNPUR(UP)
M/S CHAUDHARANA STEELS P LTD

Appellant

Vs

Respondent

C.C.E.ALLAHABAD

I am directed to transmit herewith a certified copy of **Final order No. 965 /2008 –SM[BR]** dated 25.3.2008
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944


Assistant Registrar

(SM Appeal Branch)

Copy to :

1. Respondent

C.C.E.ALLAHABAD

38,M.G.MARG, CIVIL LINE, ALLAHABAD.

2. Adv. / Consult

MR.S.P. OJHA

299, BAGHAMBARI HOUSING SCHEME, ALLAHPUR, ALLAHABAD, (UP)

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.3353/2006-SM

(Arising out of order in appeal No.102/CE/App/2006 dated 5.9.2006 passed by the Commissioner of Central Excise (Appeals), Allahabad)

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 Chaudharna Steels Pvt Ltd Appellants
(Rep. by Shri S.P. Ojha, Consultant)
Vs

CCE, Allahabad Respondent
(Rep. by Shri B.S. Suhag, DR)

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

Date of Hearing: 25.3.2008

Final Order No. 965 /2008-SM(BR)

Per P.K. Das:

Heard both the sides and perused the record.

2. The appellants filed this appeal against the imposition of penalty under Section 11AC of the Central Excise Act, 1944. The Adjudicating

Authority confirmed the demand of duty of Rs.51,522/- and imposed penalty of equal amount. The Commissioner (Appeals) reduced the penalty to Rs.25,000/-.

3. It has been alleged that it appears from Cenvat record that the appellants availed credit of Rs.51,522/- on scrap of G.C. sheets, which were used in plant and machinery and not eligible for Cenvat credit. It is seen from the impugned order of the Commissioner (Appeals) that the scrap of GC sheets were purchased for manufacture of steel formers, which were captively used as a part of induction furnace and further used in the manufacture of final product and the remnants were used in the manufacture of final product. The learned Counsel on behalf of the appellants submits that the appellants were eligible to avail credit but in order to avoid complicity; they debited the entire amount of duty before issue of show cause notice. Therefore, the penalty under Section 11AC is not sustainable.

4. The learned DR submits that the Commissioner (Appeals) considered the situation as there was a conflicting views and he reduced the penalty to 50% of duty.

5. I find that the Adjudicating Authority imposed penalty under Section 11AC of the Act. The Commissioner (Appeals) observed that there is contravention of Rules is established and penalty is warranted. Thus, there is no material produced by the Revenue that the appellants availed the credit with intent to evade payment of duty. The penalty under Section 11AC is not sustainable. The Hon'ble Rajasthan High Court in the case of UOI Vs T.P.L. Industries Ltd reported in 2007 (214) ELT 506 (Raj) held that short levy of duty deposited by the assesee before issue of show cause notice,

imposition of penalty of equal amount under Section 11AC of the Act is not maintainable. In the present case, the contention of the appellant that they are eligible for credit and in order to avoid legal complicity, they have deposited the duty long before issue of show cause notice. Hence, I do not find any reason for imposition of penalty under Section 11AC of the Act. Accordingly, penalty is set aside. The appeal is allowed with consequential relief.

(Order dictated and pronounced in the open Court).

MPS*

(P.K. Das)
Member(Judicial)