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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/3255/2006-SM[BR] Date 20/06/2008

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

To :
M/S GARG TUBES LTD
9TH KM STONE,G.T.ROAD, VILL-ACHEJA,PO
DUJANA, DISTT-G.B.NAGAR, [UP]

M/S GARG TUBES LTD Appellant
Vs
C.C.E.GHAZIABAD Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 970 /2008 –SM[BR] dated 13.3.2008 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.GHAZIABAD
   CGO COMPLEX,KAMLA NEHRU NAGAR,GHAZIABAD.
2. Adv. / Consult
   MR.RAJESH CHHIBBER
   FA/9, NEW KAVI NAGAR, GHAZIABAD
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)

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

E/Appeal No. 3255/06-SM

(Arising out of order in appeal No.120/CE/Apl/Gzb/06 dated 7.8.06 passed by the Commissioner of Central Excise (Appeals), Ghaziabad)

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?

No.

M/s Garg Tubes Ltd — Appellant (Rep. by Shri Rajesh Chhibber, Advocate)

Vs

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

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

Date of Hearing: 13.3.08

Final Order No. 970 /2008-SM(BR)

Per **P.K. Das:**

The relevant facts of the case, in brief, are that the Appellants are engaged in the manufacture of MS Tubes, Galvanized Steel Tubes, etc. classifiable under Chapter 73 of the Schedule to the Central Excise Tariff

Act, 1985. On 24.9.04, the Central Excise officers visited the Appellants factory and verified the stocks of finished goods and inputs. The officers ascertained shortage of inputs. Shri A.K. Tyagi, General Manager of the Appellants in his statement (as reproduced in Adjudication Order) stated that "inputs were received by Weighbridge and maintained but due to certain operation like slitting and rolling its coils, slitted in various sizes and it may be due to the estimated average of coils. Secondly, our drowsing was in operation during estimation of Zinc quantity. It seems that some workman add the zinc quantity in the cattle without estimated and it is very less quantity difference." The appellants immediately debited the duty in the RG 23-A, Part II Account on the same day. The Adjudicating Authority confirmed the demand of duty and appropriated the amount as deposited by the Appellants. He also imposed penalty of equal amount of duty under Rule 13 of Cenvat Credit Rules, 2002 read with Section 11AC of the Central Excise Act, 1944. The Commissioner (Appeals) upheld the Adjudication Order.

2. The learned Advocate on behalf of the Appellants submits that shortage was detected during verification and the Appellants immediately paid the duty. There is no material for clandestine removal of goods and therefore, penalty under Section 11AC of the Act is not sustainable. He relied upon the following decisions of the Tribunal as under:

a) Nachiketa Papers Ltd Vs CCE, Chandigarh
2007 (79) RLT 572 (CESTAT-Del)

b) CCE, Ahmedabad-II Vs Alfa ICA (I) Ltd
2008 (222) ELT 255 (Tri.- Ahmd.)

3. The learned DR reiterates the finding of the Commissioner (Appeals). He submits that the Appellants failed to give definite explanation for shortage of goods and therefore, it is presumed that the goods were cleared clandestinely.

4. After hearing both the sides and on perusal of the record, I find that shortage of inputs was ascertained during stock verification. The Appellants explained the reasons for shortage and deposited the duty on the same day. The Revenue has not placed any evidence for clandestine removal of inputs. The Tribunal in a series of decisions held that mere shortage without corroboration by way of any statement of the concerned person or other private records not leads to conclusion of clandestine removal of goods. It is not a case where duty of excise has not been paid by reason of collusion, fraud or any willful mis-statement or suppression of fact for contravention of any provisions of the Central Excise Act or Rules made thereunder with intent to evade payment of duty and therefore, Section 11AC of the Act cannot be invoked. Accordingly, penalty imposed under Rule 13 of Cenvat Credit Rules, 2002, Rule 25 of Central Excise Rules read with Section 11AC of the Act, is set aside. The Appeal is allowed with consequential relief.

(Order dictated and pronounced in the open Court).

**(P.K. Das)**
Member(Judicial)

MPS*