TELEGRAM : CEGCANAL
Website..www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

CUSTOMS. EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
SINGLE MEMBER APPEAL BRANCH

Appeal No. C/277 /2008-SM[BR], C/ CO / 213 / 2008 -SM[BR]   Date 19/08/2008

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

To :
C.C. (PREVENTIVE) AMRITSAR
CUSTOM HOUSE, CENTRAL REVENUE BUILDING,
THE MALL, AMRITSAR 143001.
C.C. (PREVENTIVE) AMRITSAR   Appellant
Vs
M/S UPPER INDIA STEEL MANUFACTURING & ENGINEERING CO.   Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1149 / 2008 -SM[BR] dated 31.7.2008 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
   M/S UPPER INDIA STEEL MANUFACTURING & ENGINEERING CO.
   FOCAL POINT,
   LUDHIANA.
2. Adv. / Consult SHRI VIKRANT KACKRIA ADV.
   KOTHI NO. 5, SCTOR -10-A, CHANDIGARH
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. Easy Service Tax Online Dot Com Pvt. Ltd. 407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad - 15
15. Office Copy
16. Guard file

Assistant Registrar
(SM Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, COURT No.III

C/Appeal No.277/2008, C/CO 213/08-SM

(Arising out of order in appeal No.12/Cus/Appl/Ldh/08 dated 18.1.2008 passed by the Commissioner (Appeals) Customs & Central Excise, Chandigarh)

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?	N
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	N
3	Whether Their Lordships wish to see the fair copy of the Order?	N
4	Whether Order is to be circulated to the Departmental authorities?	N

Commissioner of Customs, Amritsar — Appellant
(Rep. by Shri Sansar Chand, DR)

Vs

M/s Upper India Steel Mfg & Engg Co — Respondent
(Rep. by Vikrant Kackria, Advocate)

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

Date of Hearing: 31.7.2008

Final ORDER No. 1149/2008-SM(BR)

Per P.K. Das:

The Revenue filed this appeal against the order in appeal No. 12/Cus/ Appl /Ldh/08 dated 18.1.2008.

2. The relevant facts of the case, in brief, are that the respondents filed Bill of Entry for clearance of Heavy Melting Scrap of 156.100 MT valued at Rs.18,54,882/-. It was found that a quantity of 0.690 MT was damaged, used, rusted bomb shells of war material/explosives. The Adjudicating Authority confiscated the entire material and imposed redemption fine of Rs. 1 lakh and penalty of Rs.50,000/-. The Commissioner (Appeals) reduced the redemption fine to Rs.25,000/- and penalty to Rs.10,000/- respectively. Hence the Revenue filed this appeal.

3. The learned DR on behalf of the Revenue submits that the Adjudicating Authority rightly imposed the penalty and redemption fine on the confiscated goods. He further submits that the Commissioner (Appeals) erroneously observed that there is no mens-rea and reduced the fine and penalty. He also submits that in the facts and circumstances of the case, imposition of fine and penalty are justified and reasonable.

4. The learned Advocate on behalf of the respondents submits that the value of the alleged goods is approximately Rs.10,000/- and the Commissioner (Appeals) reduced the fine and penalty proportionately. He relied upon the following decisions of the Tribunal as under:-

a) A.R.. Casting Pvt Ltd Vs CC New Delhi
2006 (200) ELT 411 (Tri.- Del.)

b) Dee-Vee Metals Vs CC (Import), Mumbai
2007 (216) ELT 223 (Tri.-Mum)

c) Bhrigu Alloys & Steels Pvt Ltd Vs CC New Delhi
2006 (203) ELT 57 (Tri.-Del.)

5. After hearing both the sides and on perusal of the record, I find that there is no dispute that the quantity of 0.690 MTs out of a total quantity of 156.100 MT was found rusted/damaged war material. The Tribunal in the case of A.R. Casting Pvt Ltd (supra) held that the damaged war materials are

liable to be confiscated and penalty imposed could be equivalent to the value of the goods. In the present case, it is seen that the value of offending material is about Rs.10,000/- approximately. The Commissioner (Appeals) reduced the penalty to Rs.10,000/- and imposed redemption fine of Rs.25,000/-. I do not find any reason to interfere with the order of the Commissioner (Appeals). Accordingly, the appeal filed by the Revenue is rejected.

(Order dictated and pronounced in the open Court.)

(P.K. Das)
Member (Judicial)

MPS*