

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/2351/2006

Date 22/08/2008

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

To :
CCE KANPUR

117/7, SARVODAYA NAGAR, KANPUR

CCE KANPUR

M/S. MAWANA STEELS LTD.

Appellant

Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No. 1154 / 2008 -SM[BR] Dated 17.7.2008
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944


Assistant Registrar

(SM Appeal Branch)

Copy to :

1. Respondent

M/S. MAWANA STEELS LTD.

JAINPUR INDL. AREA, KANPUR DEHAT.

2. Adv. / Consult SHRI BIPIN GARG ADV.

B-1 / 1289 -A, VASANT KUNJ NEW DELHI -70

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

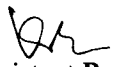
12. Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar, Chennai 60017

13. Taxindiaonline.com Pvt.Ltd, B-XI/8183, Vasant Kunj, New Delhi - 110070

14. 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, NEW DELHI
COURT NO.II

E/Appeal No.2351/06 -SM

(Arising out of order in appeal No. 3-5/CE/App1/Knp/06 dated 19.1.06
passed by the Commissioner of Central Excise (Appeals), Kanpur)

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?

} 2.

CCE, Kanpur

Appellant
(Rep. by Shri S. Gautam, DR)

Vs

M/s Mawana Steels Ltd

Respondent
(Rep. by Shri Atul Gupta, Advocate)

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

Date of Hearing: 17.7.08

Final Order No. 1154/2008-SM(BR)

Per P.K. Das:

The Revenue filed this appeal against the order of the Commissioner
(Appeals) whereby penalty was reduced.

2. After hearing both the sides and on perusal of the record, I find that the Adjudicating Authority confirmed the demand of duty and imposed penalty of equal amount under Section 11AC of the Central Excise Act, 1944 alongwith interest. The Commissioner (Appeals) modified the demand of duty to Rs. 1,74,999/- and reduced the penalty to Rs.40,000/-. The Revenue filed this appeal for enhancement of penalty to equal amount of duty.

3. The learned Advocate submits that the respondents deposited the entire amount of duty before issue of show cause notice. The Hon'ble Delhi High Court in the case of CCE Delhi Vs Malbro Appliances Pvt Ltd reported in 2007 (208) ELT 503 (Del.) has held that penalty equal to duty not imposable when duty paid before issue of show cause notice. It has been held that the First proviso to Section 11-AC⁽¹⁾ of the Act providing for penalty of 25% of duty, if duty determined paid within 30 days of passing such order. In the present case, it is seen that the respondents deposited the duty before issue of show cause notice and penalty is imposable 25% of duty (i.e. Rs.45,000/- approximately). The Commissioner (Appeals) reduced the penalty to Rs.40,000/-. The learned Advocate submits that the respondent has already deposited the entire amount of penalty alongwith interest after receipt of the order of the Commissioner (Appeals). In view of that, the impugned order is modified in so far as penalty is enhanced to Rs.45,000/- instead of Rs.40,000/-. The appeal is disposed of in the above terms.

(Order dictated and pronounced in the open Court).

MPS*

(P.K. Das)
Member(Judicial)