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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/3961/2006-SM [BR] Date 22/08/2008

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

To :
C.C.E.CHANDIGARH
PLOT NO 19, SECTOR 17-C, CHANDIGARH.

C.C.E.CHANDIGARH Appellant

Vs

M/S UNIQUE ISPAT (P)LIMITED Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1158 / 2008 –SM[BR] dated 25.7.2008

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 UNIQUE ISPAT (P)LIMITED

MANDI GOBINDGARH.

2. Adv. / Consult

NONE;-----------------

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, NEW DELHI
COURT NO.II

E/Appeal No.3961/06-SM

(Arising out of order in appeal No.943/CE/Chd/06 dated 3.10.06 passed by the Commissioner of Central Excise (Appeals), 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?

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?

NA

CCE, Chandigarh	Appellant (Rep. by Shri A.K. Rastogi, DR)
Vs	
M/s Unique Ispat (P) Ltd	Respondent (Rep. by none)

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

Date of Hearing: 25.7.08

Final Order No. 1158 /2008-SM(BR)

Per P.K. Das:

Heard the learned DR on behalf of the Revenue. None appeared on behalf of the respondents inspite of issue of notice.

2. The relevant facts of the case, in brief, are that the respondents are engaged in the manufacture of iron and steel products classifiable under Chapter 72 of the Schedule to the Central Excise Tariff Act, 1985. On 15th September, 2004, the Central Excise officers visited the respondents factory and detected shortage of 17.641 MTs of flats/bars. Shri M.P. Mittal, Director of the respondents factory, admitted the shortage and deposited the duty of Rs.50,499/- vide PLA Entry No.7 and 8 dated 17.9.2004 alongwith penalty of Rs.12,625/- vide PLA Sl No.9 dated 17th September 2004. The Adjudicating Authority confirmed the payment of duty and appropriated the amount as deposited by them. He imposed penalty of equal amount under Section 11AC of the Central Excise Act, 1944 and appropriated the amount of Rs.12,625/- as already deposited by them. The Commissioner (Appeals) modified the adjudication order in so far as penalty was set aside. Hence the Revenue filed this appeal.

3. After hearing both the sides and on perusal of the record, it is seen that the Commissioner (Appeals) set aside the penalty on the ground that the respondents deposited the duty before issue of show cause notice and followed the larger Bench decision of the Tribunal in the case of CCE Delhi vs. Machino Montell (I) Ltd reported in 2004 (62) RLT 709 (CESTAT LB). It is seen that this decision of the Larger Bench of the Tribunal was over-ruled by the Hon'ble Punjab & Haryana High Court. I find that the Commissioner (Appeals) while examining the case observed that the respondents voluntarily deposited the duty on the spot and it is not possible to draw a conclusion that the goods found short were clandestinely removed by the respondents. It is noted that the Commissioner (Appeals) had not

looked into the fact that the respondents voluntarily paid the penalty of 25% of duty. So, the matter is required to be examined by the Commissioner (Appeals). Accordingly, the impugned order is set aside and the matter is remanded back to the Commissioner (Appeals) to examine afresh after considering the fact that the respondents deposited the penalty of 25% of duty. Needless to say, that the Commissioner (Appeals) shall give proper opportunity of hearing before decision. The Appeal is allowed by way of remand.

(Order dictated and pronounced in the open Court).

(P.K. Das)
Member(Judicial)

MPS*