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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/3549/2006-3550/2006-SM[BR] Date 03/09/2008

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

To :
C.C.E.KANPUR
117/7, SARVODAYA NAGAR, KANPUR.

C.C.E.KANPUR Appellant

Vs

M/S V.S.TUBE TECH.PVT.LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1245 – 1246 /2008 –SM[BR] dated 1.8.2008 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   1. M/S V.S.TUBE TECH.PVT.LTD.
   2. SHRI SHARAD AGARWAL
   C-46&47, INDL. AREA, PHASE-II, ORAI.
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, COURT No.III

E/Appeal Nos. 3549 - 50/2006-SM

(Arising out of order in appeal No.175-176/CE/Appl/Knp/2006 dated 27.4.2006 passed by the Commissioner (Appeals) Customs & Central Excise, 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?	N
3	Whether Their Lordships wish to see the fair copy of the Order?	
4	Whether Order is to be circulated to the Departmental authorities?	

Commissioner of Central Excise, Kanpur — Appellant
(Rep. by Shri S. Gautam, DR)

Vs

1. M/s. V.S Tube Tech (P) Ltd
2. Shri Sharad Agarwal

Respondent
(Rep. by none)

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

Date of Hearing: 1.8.2008

Final ORDER No. 1245-1246/08-SM(BR)

Per P.K. Das:

Heard the learned DR on behalf of the Revenue.

2. None appeared on behalf of the respondent despite issue of notice.

3. The relevant facts of the case, in brief, are that the respondents are engaged in the manufacture of MS ingots classifiable under sub-heading 7269 of the Schedule to the Central Excise Tariff Act, 1985. On 16.3.2005, the Central Excise officers visited the respondents factory and conducted stock verification of raw materials and finished goods. The Central Excise officers ascertained shortage of raw material involving Cenvat credit of Rs. 1,13,722/- which was deposited by the respondents immediately. The Adjudicating Authority confirmed the demand of duty and appropriated the said amount deposited by the appellants and imposed penalty of equal amount on the respondent No.1. He also imposed penalty of Rs.20,000/- on Shri Sharad Agarwal, authorised signatory of the respondent company. The Commissioner (Appeals) modified the adjudication order in so far as penalty was reduced to Rs.30,000/- and Rs.5,000/- on respondent No.1 and 2 respectively. The Revenue filed these appeals for enhancement of amount of penalty.

4. The learned DR submits that the respondent failed to give proper explanation for the shortage and therefore, it is rightly held by the Assistant Commissioner that the goods were cleared clandestinely. In the facts and circumstances of the case, the Adjudicating Authority correctly imposed penalty equal amount of duty.

5. After hearing the learned DR and on perusal of the record, I find that the respondent deposited the entire amount of duty before issue of show cause notice. At the request of the Bench, the learned Advocate Shri Hemant Bajaj placed the decision the Hon'ble Delhi High Court in the case of CCE Vs Malbro Appliances Pvt Ltd reported in 2007 (208) ELT 503 (Del.) held that duty deposited before issue of show cause notice, the penalty is imposable 25% of the duty as determined in terms of First Proviso to Section

11AC(1) of the Central Excise Act, 1944. In the present case, the respondents deposited duty before issue of show cause notice. The amount of penalty would be 25% of the duty, which was imposed by the Commissioner (Appeals). So, I do not find any reason to interfere with the order of the Commissioner (Appeals). Accordingly, both the appeals filed by the Revenue are rejected.

(Order dictated and pronounced in the open Court.)

(P.K. Das)
Member (Judicial)

MPS*