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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/93 /2007-SM[BR] Date 03/09/2008

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

To :
C.C.E. CHANDIGARH
CENTRAL REVENUE BUILDING SECTOR 17,
CHANDIGARH.

C.C.E. CHANDIGARH Appellant

Vs

M/S SRI RAMA STEELS LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1259 / 2008 -SM[BR] dated 18.8.2008 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
   M/S SRI RAMA STEELS LTD.
   VILLAGE BATED, BADDI ROAD, BAROTIWALA, DISTT. SOLAN(H.P.)
2. Adv. / Consult SHRI AJAY JAIN ADV.
   1293 SECTOR-18-C, CHINDIGARH-18.
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,
West Block No.2, R.K Puram, New Delhi-110066

Court- IV

Date of hearing: 18.8.2008

E/Appeal No.93/2007-SM(BR)

(Arising out of Order-in-Appeal No. 973/CE/CHD/2006 dated 17.10.2006 passed by the Commissioner (Appeals) Central Excise Chandigarh)

For approval and signature:

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

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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?

No

4. Whether Order is to be circulated to the Departmental authorities? Yes

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~~M/s~~ CCE, Chandigarh — Appellant/Applicant (Rep. by Shri Sansar Chand, DR)

Vs.

M/s Sri Rama Steels Ltd. — Respondent (None)

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

Find Order No. 1259/08- SM(BR)

Per: P.K. Das

In this case, the Respondent deposited the duty of Rs. 71,134.00 and penalty 25% of duty i.e. Rs.17,784.00 before issue of the show cause notice.

2. The Adjudicating Authority confirmed the demand of duty of Rs. 71,134.00 and appropriated the said amount as already deposited by the Respondent before issue of show cause notice. He also imposed penalty of equal amount under Rule 13(1) of Cenvat Credit Rules 2002 and also appropriated the amount of Rs. 17,784.00 deposited by the Respondent towards penalty. The Appellant filed appeal before the Commissioner (Appeals) for setting aside of penalty. Commissioner (Appeals) modified the Adjudication Order in so far as the penalty imposed in excess to the amount already deposited by the Respondent was set-aside. Hence, the Revenue filed this appeal before the Tribunal for enhancement of penalty of equal amount of duty.

3. After hearing the ld. DR and on perusal of the records, it is seen that the Hon'ble Delhi High Court in the case of K.P. Pouches (P) Ltd. Vs. UOI & Anr. reported in 2008 (85) RLT 483 (Del.) held that in terms of first proviso to section 11 AC of Central Excise Act 1944, provides penalty is imposable 25% of the duty as determined, if the assessee deposits the entire amount of duty within 30 days from the date of receipt of Adjudication Order. In the present case, the Respondent deposited the entire amount of duty alongwith penalty of 25% of duty before issue of show cause notice. So, imposition of penalty of equal amount of duty by the Adjudicating Authority is not correct. Accordingly, I do not find any infirmity in the order of the Commissioner (Appeals). The appeal filed by the Revenue is rejected.

(Dictated and pronounced in the open court.)

(P.K. Das)
Member (Judicial)

K. Gupta