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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/745 /2007-746 /2007 – SM[BR] Date 27/11/2008

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

To :
C.C.E, CHANDIGARH
C.R.BUILDING, PLOT NO. 19, SECTOR 17-C,
CHANDIGHAR
C.C.E, CHANDIGARH Appellant
Vs
SURENDRA STEEL ROLLING MILLS Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1527 – 1528 / 2008- **SM[BR]** dated 14.11.2008

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
1. SURENDRA STEEL ROLLING MILLS
MANDI GOBINDGARH
2. SHRI JOGINDER PAL, PARTNER
M/S SURENDRA STEEL ROLLING MILLS, MANDI GOBINDGARH
2. Adv. / Consult SHRI SIDDARTH JOSHI ADV.
27 / 76 STREET NO. 8. VISWAS NAGAR SHADARA DELHI-32.

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 - 3
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
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-1
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Assistant Registrar
(SM Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATETRIBUNAL,
West Block No.2, R.K Puram, New Delhi-110066

COURT-IV

Date of hearing: 14.11.2008

E/Appeal No.745 & 746/2007-SM(BR)

(Arising out of Order-in-Appeal No. 1041-42/CE/CHD/2006 dated 27.10.2006 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?
4. Whether Order is to be circulated to the Departmental authorities?

YN)

CCE Chandigarh — Appellant
(Rep. Shri S.K. Panda, DR)

Vs.

M/s Surendra Steel Rolling Mills — Respondent
(Rep. Shri Siddharth Joshi, Advocate)

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

Final Order No. 1527-1528/08-SM(BR)

Per: P.K. Das

Revenue filed this appeal against Order-in-Appeal No.1041-42/CE/CHD/06 dated 27.10.2006 passed by the Commissioner (Appeals) whereby penalty of equal amount of duty on the Respondent No. 1 and Rs. 50,000.00 on Respondent No. 2 were set-aside.

2. The relevant facts of the case, in brief, are that on 27.11.2005 the Central Excise Officers visited the Respondents factory and conducted stock verification, which resulted shortage of 0.705 MTs of Silico Manganese. The Respondents debited the duty of Rs. 2,68,481.00 on the same day from cenvat account. Respondent No. 2 admitted the shortages and stated in the statement that the inputs were used in a manufacture of steel ingots which they sold in the open market on cash sale basis without recording the production and without issuance of sale invoices. Adjudicating Authority confirmed the demand of duty Rs.2,68,481.00 and appropriated the said amount as debited by them and imposed penalty of equal amount under Rule 25 of Central Excise Rules of 2002 and also appropriated the amount of Rs. 67,120.00 as deposited by the Respondent against penalty. He also imposed a personal penalty of Rs. 50,000 against Respondent No. 2.

Commissioner (Appeals) set-aside the penalties on the Respondents. Hence the Revenue filed these appeals.

3. After hearing both sides and on perusal of records, it is seen from the show cause notice, that the Respondents cleared the goods without payment of duty. It is a case of clandestine removal of goods and therefore, penalty is imposable under Rule 25 of the Rules read with Section 11 AC of Central Excise Act, 1944. The Hon'ble Punjab & Haryana High Court in the case of Commissioner of Central Excise, Ludhiana Vs. Omkar Steel Tubes (P) Ltd. 2008 (221) ELT 200 (P&H) held that mere fact that duty has been paid before issuance of show cause notice would not result into in application of Section 11 AC of the Act. The Hon'ble Punjab & Haryan High Court in the case of Commissioner of Central Excise Vs. Malbro Appliances P. Ltd. reported in 2007 (208) ELT 503 (Del.) held that 1st proviso to Section 11 AC of the Act providing for penalty of 25% of duty if that assessee deposited the duty within 30 days of the order.

4. In the present case, the Respondent deposited the entire amount of duty with penalty 25% of duty before issue of Adjudicating Order. So, the Respondents are liable to pay penalty of 25% of duty (i.e. Rs.67,120.00).

5. In view of the above discussion, order passed by the Commissioner (Appeals) against Respondent No. 1 is set-aside. Adjudication Order is restored and penalty imposed the Respondent No. 1 is modified and reduced to Rs.67120.00 which they have already deposited. In so far as appeal against Respondent No. 2. I find that the penalty was imposed on the partnership firm and, therefore, of separate penalty on the partner is not proper. Accordingly, the appeal against Respondent No.2 is dismissed.

(Dictated and pronounced in the open court).

(P.K. Das)
Member (Judicial)

K. Gupta