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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/739 /2007 – SM[BR] Date 01/12/2008

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

To :
C.C.E, CHANDIGARH

C.R.BUILDING, PLOT NO. 19, SECTOR-17-C,
CHANDIGARH
C.C.E, CHANDIGARH Appellant

Vs

PATIALA CASTINGS PVT. LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1560 / 2008- **SM[BR]** dated 26.11.2008

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

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent

PATIALA CASTINGS PVT. LTD.

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 - 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
15 Office Copy
16 Guard file

Assistant Registrar

(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, R.K. PURAM, W.B. NO.2, PRINCIPAL BENCH NEW DELHI, COURT NO.I

Excise Appeal No. 739 of 2007

[Arising out of Order-in-Appeal No. 999/CE/CHD/06 dated 24.10.2006 passed by the Commissioner (Appeals) Central Excise, Chandigarh]

Date of Hearing/Decision : 26.11.2008

For approval and signature:

Hon'ble Ms. Jyoti Balasundaram, Vice President

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982.	No
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
3	Whether Their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

CCE, Chandigarh — Appellant

Vs.

M/s Patiala Castings Pvt. Limited — Respondent

Appearance:

Mr. R.K. Verma, DR for the Appellant
None for the Respondent

CORAM: Ms. Jyoti Balasundaram, Vice President

Final **Order** No. 1560/08 - SM (BR)

Per Jyoti Balasundaram:

The Revenue is aggrieved by the order of the Commissioner (Appeals) reducing the penalty on the respondents herein who paid duty calculated on the shortage of final products detected in their factory, alongwith 25% penalty prior to the issue of the show cause notice, to Rs. 5,000/-. According to the Department, the first proviso to Section 11AC provides that where such duty as determined under sub-section (2) of Section 11A, and the interest payable thereon under section 11AB, is paid within thirty days from the date of communication of the order of the Central Excise Officers determining such duty, the amount of penalty liable to be paid by such person under this section shall be 25% of the duty so determined. Since the respondents had already paid the duty together with 25% penalty, it is the DR's contention that the penalty of 25% was correct as per the legal provision and could not and should not have been reduced by the Commissioner (Appeals).

2. None appears for the respondent in spite of notice and hence I heard the learned DR for the appellant and perused the record. I find substance in the contention raised by the learned DR in the light of the statutory provision. I, therefore, set aside the reduction of the penalty to Rs. 5,000/- holding that the payment of Rs. 25,897/- of penalty alongwith the duty calculated on the shortage was correct, set aside the impugned order and allow the appeal.

[Dictated and pronounced in the open Court]

[Jyoti Balasundaram]
Vice President

[Pant]