

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/3661/2006 -SM[BR] E/ MISC/ 123/ 2008-SM[BR]

Date 28/04/2008

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

To :
ASHIANA ISPAT LTD.

A-1116, RIICO INDL. AREA, BHIWADI, ALWAR
(RAJASTHAN)
301019

ASHIANA ISPAT LTD.

Appellant

C.C.E. JAIPUR

Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No. 662 /2008 -SM[BR]&M/ 135/2008-SM dated 29.2.2008
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944


Assistant Registrar

(SM Appeal Branch)

Copy to :

1. Respondent

C.C.E. JAIPUR

NCR BUILDING, C-SCHEME, JAIPUR (RAJASTHAN)
302005

2. Adv. / Consult SHRI D. K. SHARMA C.A.

M/S APPELLANT;-----

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 Publications (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. Office Copy

15. Guard file


Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO.II

E E 1m 1123108
E/Appeal No.3661 /2008-SM

(Arising out of order in appeal No.225/GRM/CE/JPR.I/06 dated 18.9.06
passed by the Commissioner of Central Excise (Appeals), Jaipur)

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?
-

M/s Ashiana Ispat Ltd

Appellant
(Rep. by Shri D.K. Singh, C.A.)

Vs

CCE, Jaipur

Respondent
(Rep. by Shri S. Gautam, DR)

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

Date of Hearing: 29.2.2008

Final Order No. *662* /2008-SM(BR)
Misc Order No. 135/08-SM(BR)
Per P.K. Das:

After hearing both the sides and on perusal of the record, I find that a shortage of finished goods was detected during stock verification and the appellants deposited the amount of duty of Rs. 1,02,268/- on 7.9.2001. After

four years, a show cause notice dated 26th October, 2005 was issued proposing to appropriate the amount of duty as deposited by them and to impose penalty under Section 11AC of the Central Excise Act, 1944. The learned Counsel relied upon the following decisions of the Tribunal as under:-

- a) Raja Forgings & Gears Ltd Vs. CCE
2007 (218) ELT 627
- b) CCE Mumbai Vs. Bharat Vijay Iron Factory Ltd
2007 (214) ELT 412
- c) CCE Ludhiana Vs Sigma Steel Tubes
2007 (218) ELT 657 (P&H High Court).

2. I find that the appellants in the statement before the Central Excise officers stated that the shortage might be due to error in weigh bridge. The Revenue failed to produce any evidence of clandestine removal of goods. Therefore, there is no reason to invoke Section 11AC of the Central excise Act, 1944 in this case. It is seen that the Tribunal has consistently viewed in several decisions that duty deposited after detection of shortage of finished goods, before issue of show cause notice, clandestine removal under Section 11AC cannot be imposed. In view of the above, penalty imposed under Section 11AC of Central Excise Act, 1944 is set aside and the appeal is disposed of in the above terms.

(Order dictated and pronounced in the open Court).

MPS*

(P.K. Das)
Member(Judicial)