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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/1860/2006-SM[BR] Date 05/05/2008

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

To :
M/S RAM GANGA CEMENT P LTD
SHAHBAD ROAD, T&P.O.BILARI DISTT
MORADABAD(UP)

M/S RAM GANGA CEMENT P LTD — Appellant

Vs

C.C.E. MEERUT II — Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 683 /2008 –SM[BR] dated 22.2.2008

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. MEERUT II
   OPP. SAHEED PARK (NEAR ASHOK KI LAT) DELHI ROAD, MEERUT (UP)
2. Adv. / Consult
   MR.R.C.GUPTA , ADV
   LEGUM JIRIS, (A LAW FIRM), "AASHIRWAD" #557, SECTOR-19, FARIDABAD(HR)
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. Office Copy
15. 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. III**

**Excise Appeal No.1860 of 2006-SM (BR)**

[Arising out of order in appeal No.48-CE/MRT dated 8.3.2006 passed by the Commissioner (Appeals) Central Excise, Raipur]

**Date of Hearing/ Decision:22.2.2008**

**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? :

No

M/s. Ram Ganga Cement (Pvt.) Ltd. — Appellants
[Rep. by Shri R.C. Gupta, Advocate.]

Vs.

CCE, Meerut — Respondent
[Rep. by Mr. A.K. Rastogi, Authorized Representative (DR)]

CORAM: **Mr. P.K. Das, Member (Judicial)**

Final Order No.683/08-SM(BR)/Dated:22.2.2008

**Per P.K. Das:**

The relevant facts of the case, in brief, are that the appellants are engaged in the manufacture of M.S. Ingots, Runners and Risers classifiable under sub-heading No.7206.90 of the Schedule to the Central Excise Tariff

Act, 1985. On 7.9.2001, the Central Excise Officers visited the appellants' factory and verified the stock. The central excise officers detected the shortage of inputs and final products against the recorded balance. The appellants debited the duty on the same day from their PLA and RG-23 A Part-II Account. A show cause notice dated 11.7.2002 was issued for appropriation of the duty amount as deposited by the appellants and to impose penalty under Rule 25 of the Central Excise Rules, 2001 read with Section 11 AC of the Central Excise Act, 1944. The adjudicating authority confirmed the demand of duty and appropriated the amount as deposited by the appellants and also imposed penalty of Rs.10,000/- under Rule 25 of the Central excise Rules, 2001 for violation of the provisions of law. The Commissioner (Appeals) upheld the adjudication order.

2. Ld. Advocate on behalf of the appellants submits that the appellants deposited the duty before issue of the show cause notice and there is no material for clandestine removal of the goods and, therefore, imposition of penalty under Rule 25 of the Rules is not warranted. He relied upon the decision of the Hon'ble High Court of Madhya Pradesh in the case of Supreme Industries Ltd. Vs. CESTAT, New Delhi reported in 2007 (214) ELT 187 (M.P.) and the Hon'ble High Court of Andhra Pradesh in the case of Commissioner of Central excise, Guntur Vs. Andhra Cements Limited reported in 2007 (216) ELT 362 (A.P.).

3. The ld. DR reiterates the findings of the Commissioner (Appeals). He submits that the shortage was admitted by the appellants and there is contravention of law and, therefore, the penalty is justified.

4. After hearing both the sides and on perusal of the records, I find that the appellants deposited the duty after issue of the show cause notice upon detection of shortage of raw material and finished goods by the central excise officers during the verification of the stock. The adjudicating authority observed that there is no tangible evidence had been adduced to prove the clandestine removal of the goods. The appellants are challenging the imposition of penalty under Rule 25 of the said Rules. Clause (d) of Rule 25 of the said Rules provides imposition of penalty for contravention any of the provisions of the rules or notifications issued under the said rules with intent to evade payment of duty. The adjudicating authority observed that there is no contravention of provisions of Rules with intent to evade payment of duty. So, penalty under Rule 25 of the Rules cannot be imposed. Accordingly, penalty is set aside. The appeal is disposed of in the above terms.

Order dictated & pronounced in open court on 22.2.2008.

( P.K. Das )
Member (Judicial)

Ckp.