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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/2554/2006 & 2586 / 2006 -SM[BR] Date 23/03/2009

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

To :
C.C.E RAIPUR

DHAMTARI ROAD, TIKRAPARA, RAIPUR

C.C.E RAIPUR Appellant

Vs

M/S GAURAV KRISHNA ISPAT (I) LTD Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 246 – 247 /2009 -SM[BR] dated 12.3.2009 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent

1. M/S GAURAV KRISHNA ISPAT (I) LTD
2. M/S GAURAV KRISHNA ISPAT [I] LTD.

PLOT NO 317-321 & 356-360, URLA INDL. AREA, RAIPUR (C.G)

URLA, RAIPUR

2. Adv. / Consult SHRI, BIPIN GARG. ADV.
B-1 /1289 -A, VASANT KUNJ NEW DELHI -70.

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 & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI

COURT – III

EXCISE APPEAL NO. 2554 & 2586 OF 2006-SM

[Arising out of Order-in-Appeal No. 58/RPR-I/2006 dated 24.3.2006 passed by the Commissioner (Appeals-I), Central Excise, Raipur]

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

CCE & C, Raipur — Appellant

Vs.

M/s. Gaurav Krishna Ispat (I) Ltd., & vice versa — Respondent

Appearance:

Shri M.M. Singh, D.R. for the Revenue/appellant;
Shri Bipin Garg, Advocate, for the appellant;

Coram:

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

Date of hearing/decision: 12th March, 2009

FINAL ORDER NO. 246-247/09-SM(BR) **dated** 12.3.09

Per P.K. Das:

The relevant facts of the case are that the assessee is engaged in the manufacture of various Hot Rolled products of iron and steel falling under Chapter 72 of the Schedule to the Central Excise Tariff Act, 1985. The Central Excise Officers visited the factory of the assessee and recovered one note book containing registration number of some vehicles along with their weight of the goods against particular dates from the possession of Gate Supervisor, Shri Rajesh Kumar Yadav. They recorded statement of Shri Rajesh Kumar Yadav. Shri V. Subba Rao, Manager (Accounts) in his statement admitted the clearance of goods without payment of duty involving Central Excise duty of Rs. 1,52,250/- and the assessee voluntarily debited the said amount. The original authority confirmed the demand of duty and appropriated the amount as debited by them. He also imposed penalty of equal amount under Section 11AC of the Central Excise Act, 1944. The Commissioner (Appeals) set aside the penalty and upheld the demand of duty. Hence, the assessee filed the appeal against the demand of duty and the Revenue filed the appeal against the setting aside of the penalty.

2. Heard both sides and perused the records.

3. Learned Advocate on behalf of the assessee submits that there is no material available to prove the clandestine removal of the goods. He submits that statement of Shri Rajesh Kumar Yadav, Gate Supervisor of the assessee was mis-read by the adjudicating authority. He submits that they have only noted in and out of the goods and persons in the note-book and it does not have any relevance with the removal of the goods.

4. Learned D.R. submits that the respondents have admitted the clandestine removal of the goods. Therefore, the submission of the learned Advocate has no force.

5. After hearing both the sides and on perusal of records, I find from the impugned order that Shri Rajesh Kumar Yadav, Gate Supervisor was maintaining note-book. Clearances of the goods on the basis of note-book was corroborated with the statement of Shri V. Subba Rao, Manager (Finance) of the assessee. They have deposited the duty voluntarily. The assessee had not paid duty under protest. The note-book is corroborated with other evidences. So, it is a case of clandestine removal of goods. The assessee paid duty before issuance of the show cause notice. Hon'ble Delhi High Court in the case of CCE vs. Malbro Appliances (P) Ltd., reported in 2007 (208) ELT 503 (Del.) and in the case of K.P. Pouches (P) Ltd. vs. UOI, reported in 2008 (228) ELT 321 (Del.) has held that in terms of proviso to Section 11AC (1) of the Act, if the assessee paid the duty before issuance of the show cause notice, penalty impossible is 25% of the duty amount. In view of that I find that

in the present case since the assessee paid the duty before the issuance of the show cause notice, penalty would be 25% of the duty amount.

6. In view of the above discussion, appeal filed by the assessee is rejected. Penalty is reduced to Rs. 38,062/-. Appeal filed by the Revenue is disposed of in above terms.

(Dictated & pronounced in the Open Court.)

(P.K. DAS)
MEMBER (JUDICIAL)

RK