RAM : CEGCANAL
: www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

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/1690/2007 – SM[BR] Date 23/03/2009

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

To :
C.C.E ALLAHABAD

38,M.G.MARG, CIVIL LINES, ALLAHABAD

C.C.E ALLAHABAD Appellant

Vs

M/S NIBI STEELS LTD Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 251 / 2009 –SM[BR] dated 16.3.2009

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

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent

M/S NIBI STEELS LTD

(CHEMICAL DIVISION)
GHOSI, MAU, (UP)

2. Adv. / Consult SHRI L.P.ASTHANA ADV.
R-163, SECOND FLOOR G.K.PART-I
NEW DELHI -110048.

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. 1690 OF 2007-SM

[Arising out of Order-in-Appeal No. 31-CE/ALLD/2007 dated 19.02.2007 passed by the Commissioner (Appeals), Central Excise, Allahabad]

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?	No
2.	Whether it would 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?	Yes

CCE, Allahabad — Appellant

Vs.

M/s. NIBI Steels Ltd. — Respondent

Appearance:

Shri M.M. Singh, D.R. for the Revenue;
Shri A. Jaju, Advocate for the respondents

Coram:

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

Date of hearing/decision: 16th March, 2009

FINAL ORDER NO. 251/09-SM(BR) **dated** 16.3.09

Per P.K. Das:

Revenue filed this appeal against Order-in-Appeal No. 31-CE/ALLD/2007 dated 19.2.2007.

2. After hearing both sides and on perusal of the records, it is seen that the original authority confirmed the demand of duty of Rs. 1,21,960/- along with interest and also appropriated the entire amount of duty as deposited by the respondents. He also imposed penalty of equal amount under Section 11AC of the Central Excise Act, 1944. The Commissioner (Appeals) modified the adjudication order and reduced the penalty from Rs. 1,21,960/- to Rs. 25,000/-.

3. The contention of the learned D.R. is that the Hon'ble Supreme Court in the case of Dharmendra Textile vs. UOI, reported in 2008 (231) ELT 3 (SC) held that imposition of penalty under Section 11AC, equal to the amount of duty is mandatory. He further submits that the Commissioner (Appeals) cannot reduce the penalty imposed under Section 11AC. Learned Advocate submits that they have deposited the entire amount of duty before issuance of the show cause notice and, therefore, penalty should be 25% of the duty amount. He relied upon the following decisions:-

(1) C.C. vs. Malbro Appliance P. Ltd. – 2007 (208) ELT 503 (Del.)

(2) K.P. Pouches (P) Ltd. vs. UOI – 2008 (228) ELT 31 (Del.)

4. In view of the above discussion, I find force in the submission of the learned Advocate. It is seen that the respondents deposited the entire amount of duty before issuance of the show cause notice. Therefore, penalty is reduced to 25% of the duty i.e. 29,250/-. Accordingly, impugned order is modified to the extent that penalty is enhanced from Rs. 25,000/- to Rs. 29,250/-. Appeal is disposed of in above terms.

(Dictated & pronounced in the Open Court.)

(P.K. DAS)
MEMBER (JUDICIAL)

RK