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/23 /2007 – SM[BR] Date 20/05/2009

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 KWALITY FOUNDRY INDUSTRIES Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 428 / 2009 –SM[BR] dated 24.3.2009

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 KWALITY FOUNDRY INDUSTRIES

   AMASEONI INDUSTRIAL AREA, RAIPUR.
2. Adv. / Consult SHRI A.JAJU ADV.
   12/13, VIJETA COMPLEX SHASTRI MARKET
   RAIPUR[C.G]

3 S.D.R
~~4 J.C.D.R.~~
5 Bar association. CESTAT. New Delhi
6 Director Publications. Customs. Excise. I.P. Estate. New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 Raghuraman's 44-B. Regal Flat.Shipra Suncity. Indirapuram - 201010.Ghaziabad. DT. U.P.
10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11 M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
12 Taxindiaonline.com Pvt.Ltd. B-XI/8183.Vasant Kunj. New Delhi - 110070
13 Taxmann Allied Service Pvt Ltd.. 21/35. West Punjabi Bagh. New Delhi - 110026
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15
15 LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
16 Office Copy
17 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. 23 OF 2007-SM

[Arising out of Order-in-Appeal No. 168/RPR-I/2006 dated 5.9.2006 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?	NA
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	NA
3.	Whether their Lordships wish to see the fair copy of the order?	NA
4.	Whether order is to be circulated to the Departmental authorities?	Yes.

CCE, Raipur — Appellant

Vs.

M/s. Kwality Foundry Industries — Respondent

Appearance:

Shri R.K. Verma, 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: 24th March, 2009

FINAL ORDER NO. 428/09-SM(BR) **dated** 24.3.09

Per P.K. Das:

Revenue filed this appeal against the order of the Commissioner (Appeals).

2. Heard both sides and perused the records. Relevant facts of the case, in brief, are that the respondents are engaged in the manufacture of various articles of Cast Iron. Central Excise officers visited the respondents' factory on 11.3.2006 and conducted stock verification. Central Excise officers detected shortage of finished goods as well as raw materials involving central excise duty of Rs. 1,05,687/-. Shri Pramod Vaswani, Director of the respondent company in his statement stated that they made the entry in the stock register on backward calculation and average rate basis and clearances were made on the basis of actual rate and, therefore, there is a difference in the stock. The respondents also debited the duty. The original authority confirmed the demand of duty and appropriated the amount as deposited by them. No penalty was imposed under Section 11AC of the Central Excise Act, 1944. Revenue filed appeal before the Commissioner (Appeals) for imposition of penalty under Section 11AC of the Act which was dismissed by the Commissioner (Appeals).

3. Learned D.R. reiterates the grounds of appeal. He submits that the respondents failed to give satisfactory explanation for the shortage of the goods. It is presumed that the goods have cleared clandestinely.

4. After hearing both sides, I am unable to agree with the contention of the learned D.R. Hon'ble Punjab & Haryana High Court in the case of CCE, Ludhiana vs. Omkar Steel Tubes (P) Ltd. has held that mens rea is essential for imposition of penalty under Section 11AC. In the present case, there is no material available that the respondents cleared the goods clandestinely. In view of that, I do not find any reason to interfere with the order of the Commissioner (Appeals). Accordingly, appeal filed by the Revenue is rejected.

(Dictated & pronounced in the Open Court.)

(P.K. DAS)
MEMBER (JUDICIAL)

RK