M/400-401/09

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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/663 /2007-664 /2007 – SM[BR] Date 25/05/2009

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

To :
C.C.E, KANPUR
117/7, SARODAYA NAGAR, KANPUR-208005.

C.C.E, KANPUR Appellant

Vs

HARI OM STEEL INDUSTRIES Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 466-467/ 2009 –SM[BR] dated 13.5.2009 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
HARI OM STEEL INDUSTRIES
2. SH. MUKESH BANSAL, PARTNER
INDUSTRIAL AREA, BIJOULI, JHANSI.
2. Adv. / Consult SHRI A.K.DIXIT ADV.
N/V;-----------------------

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)
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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. 663-664 OF 2007-SM

[Arising out of Order-in-Appeal No. 02 & 03/CE/APPL./KNP/2007 dated 25.01.07 passed by the Commissioner (Appeals), Customs & Central Excise, Kanpur]

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, Kanpur — Appellant

Vs.

M/s. Hari Om Steel Industries,
Shri Mukesh Bansal, Partner — Respondents

Appearance:

Shri S. Gautam, D.R. for the Revenue;
Shri A.K. Dixit, Advocate for the respondent

Coram:

Hon'ble Mr. P.K. Das, Member (Judicial), Date of hearing/decision: 13th May, 2009

FINAL ORDER NO. 466-467/09 **dated** 13/5/09

Per P.K. Das:

Heard both sides and perused the records.

2. After hearing both sides and on perusal of the records, I find that the respondents are engaged in the manufacture of Iron & Steel Bars. Central Excise officers visited their factory on 11.3.2005 and detected shortage of finished goods during stock verification. Shri Mukesh Bansal, partner of the respondent company in his statement stated that the goods were removed from the factory in his absence by the factory staff without issuing invoice and without payment of central excise duty. He has also deposited the duty immediately. Original authority confirmed the demand of duty of Rs. 1,26,372/- and appropriated the amount as deposited by them. He also imposed penalty of equal amount under Section 11AC of Central Excise Act, 1944 and a sum of Rs. 10,000/- under Rule 25 of Central Excise Rules, 2002 on the respondent firm and penalty of Rs. 10,000/- under Rule 26 of the Rules on the partner of the respondent firm. Commissioner (Appeals) set aside the penalties. Hence, Revenue filed these appeals.

3. It is revealed from the statement of the partner of the firm that the goods were cleared without payment of duty. So, it is a case of clandestine removal of goods. Hence, imposition of penalty under Section 11AC is warranted. Learned Advocate relied upon the decision

of the Hon'ble Delhi High Court in the case of K.P. Pouches (P) Ltd. vs. UOI, reported in 2008 (228) ELT 31 (Delhi) wherein it is held that the assessee deposited the entire duty amount well before issuance of Show Cause Notice, hence, liable to pay only 25% of duty amount as penalty. In the present case, respondent firm deposited the duty before issue of show cause notice and, therefore, penalty would be only 25% of duty amount (i.e. Rs. 31,593/-). As the penalty imposed under Section 11AC of the Act is upheld, penalty of Rs. 10,000/- under Rule 25 of the Rules is set aside. Regarding imposition of penalty on the partner of the firm, it is seen that the goods were cleared in his absence by the staff which he admitted on the spot. Therefore, penalty on the partner of the firm is not justified. Accordingly, Commissioner (Appeals) rightly set aside the penalty on the respondent NO. 2, partner of the firm.

4. In view of the above discussion, appeal against respondent No. 1 is allowed and penalty is reduced to Rs. 31,593/- (Rupees thirty one thousand five hundred & ninety three only) and appeal against respondent No. 2, partner of the firm, is rejected.

(Dictated & pronounced in the Open Court.)

(P.K. DAS)
MEMBER (JUDICIAL)

RK