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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/1999/2007 – SM[BR] Date 02/06/2009

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

To :
C.C.E. RAIPUR
CENTRAL EXCISE BUILDING, DHAMTARI ROAD,
TIKRAPARA, RAIPUR 492001.

C.C.E. RAIPUR Appellant
Vs
M/S STEEL AUTHORITY OF INDIA LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 518 / 2009 –SM[BR] dated 20.5.2009 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent

M/S STEEL AUTHORITY OF INDIA LTD.
BHILAI STEEL PLANT, ROOM NO. 118, ISPAT BHAWAN, DISTT. DURG, C.G.

2. Adv. / Consult
NONE;--------------

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. 1999 OF 2007-SM

[Arising out of Order-in-Appeal No. 60/RPR-II/2007 dated 12.3.07 passed by the Commissioner (Appeals-II), Customs & 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?	N
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, Raipur — Appellant

Vs.

M/s. Steel Authority of India Ltd., — Respondent

Appearance:

Shri Sansar Chand, D.R. for the Revenue;
None for the respondent

Coram:

Hon'ble Mr. P.K. Das, Member (Judicial), Date of hearing/decision: 20th May, 2009

FINAL ORDER NO. 518/09-SM(NB) **dated** 20.5.09

Per P.K. Das:

Heard learned D.R. on behalf of the Revenue. None appeared on behalf of the respondent.

2. After hearing learned D.R. and on perusal of the records, I find that Revenue filed this appeal against reduction of penalty. Original authority confirmed the demand of duty of Rs. 4,38,237/- and imposed penalty of equal amount under Section 11AC of Central Excise Act, 1944 and Rs. 25,000/- under Rule 25 of Central Excise Rules, 2002 along with interest under Section 11AB of Central Excise Act, 1944. Commissioner (Appeals) upheld the demand of duty and reduced the penalty to Rs. 40,000/- and Rs. 10,000/- under Section 11AC of the Act and Rule 25 of the Rules respectively.

3. Commissioner (Appeals) observed that such goods can be said to have been removed with intent to evade payment of duty and in violation of Rules and Act and the lower authorities rightly invoked extended period in demanding duty. Hon'ble Supreme Court in the case of UOI vs. Dharamendra Textile Processors, reported in 2008 (231) ELT 3 (S.C.) held that there is no discretionary power of the authority to reduce the penalty imposed under Section 11AC of the Act. I am of the view that when the extended period of limitation would apply penalty under Section 11AC of the Act is warranted. It appars that the Commissioner

(Appeals) passed the order without examining the facts properly. Therefore, impugned order is set aside and the matter is sent back to the Commissioner (Appeals) to decide the case after examining the facts and considering the decision of the Hon'ble Supreme Court in the case of Dharamendra Textile Processors (supra). Accordingly, appeal filed by the Revenue is allowed by way of remand.

(Dictated & pronounced in the Open Court.)

(P.K. DAS)
MEMBER (JUDICIAL)

RK