TELEGRAM : CEGCANAL
Website : 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/2012 -2013 / 2007 –SM[BR] Date 26/05/2009

Assistant Registrar
C.E.S.T.A.T, New Delhi
To :
1. M/S SAI MINDA LTD.
2. SHRI SANDEEP GOSWAMI, FORMER HEAD (CFA) M/S MINDA SAI LTD.

B-20 & 21, PHASE-II, EXTN., NOIDA

M/S SAI MINDA LTD. Appellant

Vs

C.C.E. NOIDA Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 481-482/ 2009-SM[BR] dated 21.4.2009 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

**Copy to :**
1. Respondent
   C.C.E. NOIDA
   C-56/42, SECTOR-62, NOIDA-201307
2. Adv. / Consult
   MR.PRAVEEN SHARMA
   KF-84, KAVI NAGAR, GHAZIABAD
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

## CENTRAL EXCISE APPEAL NO. 2012-13 OF 2007-SM

[All arising out of common Order-in-Appeal No. 35 & 36/CE/APPL/NOIDA/07 dated 30.3.2007 passed by the Commissioner (Appeals), Central Excise, Meerut-II, Noida]

**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. |

M/s. Minda Sai Limited,
Shri Sandeep Goswami, Former Head (CFA) — Appellants

Vs.

CCE, Noida — Respondent

**Appearance:**

Shri Praveen Sharma, Advocate for the appellants;
Shri S. Gautam, D.R. for the Revenue

**Coram:**

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

**Date of hearing/decision: 21st April, 2009**

**FINAL ORDER NO.** 481 - 482/09 SM(BR) **dated** 21/4/09

**Per P.K. Das:**

Since both the appeals are arising out of common order, they are being taken up together for disposal.

2. The relevant facts of the case, in brief, are that the appellants are engaged in the manufacture of Wing Harness & Components for motor vehicles. On 17.2.2006 the Central Excise Officers visited the factory and conducted stock verification. The said officers found shortage of finished goods of 82144 nos. of different specification of 'wiring harness' involving central excise duty of Rs. 2,14,176/- and Cess of Rs. 4284/-. They also detected excess quantity of 73590 nos. of different specification of 'wiring harness' involving central excise duty of Rs. 1,57,954/- and Cess of Rs. 3159/-. The appellants debited the duty on the shortage of finished goods on the same date. The excess quantity was seized and released provisionally. The original authority confiscated the said goods and imposed redemption fine of Rs. 2,50,000/-. He also confirmed the demand of duty of Rs. 2,14,176/- on the shortage and appropriated the amount as already deposited by the appellants. He also imposed penalty of Rs. 1 lakh on the appellant company and penalty of

Rs. 15,000/- on Shri Sandeep Goswami, Head (CFA), appellant No. 2 under Rule 26 of Central Excise Rules, 2002. Hence, both the appellants filed these appeals.

3. Learned Advocate on behalf of the appellants submits that Shri Sandeep Goswami, Head (CFA) of the appellant company on the spot explained the reason for such discrepancy as clerical error. He also submits that in reply to show cause notice dated 3.7.2006 the appellants contended that there were 71 different varieties of their product which were being manufactured. He also contended that so many number of varieties of goods is enough for any clerical mistake while making entries in stock. He further submits that there is no intention of clandestine removal of goods and, therefore, confiscation of the goods and imposition of penalty are not warranted. It is his contention that there is no contravention of rule and, even if there is any contravention, it is non-maintenance of proper accounts under Rule 10 of Central Excise Rules, 2002. He also submits that in order to avoid legal implications the appellants deposited the duty on the shortage which is not disputed in the present appeal. Learned Advocate relied upon the decision of the Tribunal in the case of Salon Ceramics Ltd. vs. CCE, Rajkot, reported in 2008 (232) ELT 525 (Tri.-Ahmd.).

4. Learned D.R. on behalf of the Revenue reiterates the finding of the Commissioner (Appeals). He submits that it is admitted position that the goods were found in excess than the RG-1 stock. He also submits that

confiscation of the goods of excess quantity, no mens rea is essential. He further submits that imposition of penalty and fine are appropriate.

5. After hearing both sides and on perusal of the records, I find that the representative of the appellants in his statement on the spot clarified that the discrepancy was occurred due to clerical error. It is seen that the appellants are engaged in manufacture of 75 different varieties of final products. There was shortage of 82144 nos. and excess of 73590 nos. of different varieties of wiring harness. Learned Advocate have not disputed the payment of duty on the shortage in order to avoid litigation. Both the authorities below observed that the goods were found unaccounted and, therefore, confiscation of goods and imposition of penalty are justified. Hence, I agree with the submission of the learned Advocate that it is a case of non-maintenance of proper account and contravention of Rule 10 of the Central Excise Rules. So, confiscation of the goods and imposition of penalty for contravention of Rule 10 is justified. However, in my view the amount of fine and penalty is highly excessive. Considering the facts and circumstances of the case I uphold the confiscation of goods and imposition of penalty but, redemption fine and penalty are reduced to Rs. 25,000/- and Rs. 5,000/- respectively.

6. Regarding imposition of penalty of Rs. 15,000/- on the appellant No. 2, I find that he is commercial head of the factory. There is no material available on records regarding his knowledge in respect of shortage of goods. Hence, imposition of penalty on the appellant No. 2 is

not justified. Accordingly, penalty on appellant No. 2 is set aside. Appeal filed by appellant No. 2 is allowed with consequential relief.

(Dictated & pronounced in the Open Court.)

(P.K. DAS)
MEMBER (JUDICIAL)

RK