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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/3578/2006-3579/2006 – SM[BR]   Date 27/05/2009

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

To :
C.C.E. CHANDIGARH
PLOT NO 19, SECTOR 17-C, CHANDIGARH.

C.C.E. CHANDIGARH   Appellant
Vs
M/S STEELAGE TUBES (P) LTD   Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 483- 484 / 2009-SM[BR] dated 18.5.2009 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 STEELAGE TUBES (P) LTD
SH OM PRAKASH YADAV,AUTHORISES SIGNATORY
MANDI GOBINDGARH.

2. Adv. / Consult
MR.K.K ANAND
A-5,BASEMENT,LAJPAT NAGAR-III NEW DELHI-24

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
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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

<u>COURT – III</u>

<u>EXCISE APPEAL NO. 3578 & 3579 OF 2006-SM</u>

[Arising out of Order-in-Appeal No. 691-692/CE/CHD/06 dated 8.8.2006 passed by the Commissioner (Appeals), Central Excise, Chandigarh]

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, Chandigarh — Appellant

Vs.

M/s. Steelage Tubes (P) Ltd.,
Shri Om Prakash Yadav — Respondents

Appearance:

Shri S. Gautam, D.R. for the Revenue;
Ms. Asmita Nayak, Advocate for the respondents

Coram:

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

Date of hearing/decision: 18th May, 2009

FINAL ORDER NO. 483-484/09-SM(BR) **dated** 18.5.09

Per P.K. Das:

After hearing both sides and on perusal of the records, it is seen that on 8.1.2004 Central Excise Officers visited the respondent's factory and conducted stock verification. The said officers detected shortage of finished goods involving Central Excise duty of Rs. 79,760/-. Shri Om Prakash Yadav, authorized signatory accepted the shortage and deposited the duty on 22.1.2004. He failed to explain the reasons for shortage. Original authority appropriated the amount as deposited by them and imposed penalty of equal amount under Rule 25 of Central Excise Rules, 2002 and also imposed penalty of Rs. 10,000/- under Rule 26 on the authorized signatory of the respondent company. Commissioner (Appeals) set aside the penalties. Hence, Revenue filed both these appeals.

2. Learned D.R. submits that the original authority imposed penalty under Rule 25 of the Rules. He further submits that authorized signatory failed to explain the reasons for shortage. He also submits that the authorized signatory deliberately suppressed the removal of goods clandestinely and, therefore, penalty imposed on him is justified. On the other hand, learned Advocate submits that in the Show Cause Notice

penalty was proposed under Section 25 of Central Excise Rules, 2002 read with Section 11AC of the Central Excise Act, 1944. He further submits that there is no material available to prove clandestine removal of goods. She relied upon the decision of the Hon'ble Punjab & Haryana High Court in the case of CCE, Ludhiana vs. Omkar Steel Tubes (P) Ltd., reported in 2008 (221) ELT 200 (P&H).

3. I agree with the submission of the learned D.R. that Commissioner (Appeals) is erred in holding that the duty was deposited before issuance of show cause notice and, therefore, penalty is not imposable. But, I agree with the order of Commissioner (Appeals) on different reasoning. It is seen that Hon'ble Punjab & Haryana High Court in the case of Omkar Steel Tubes (P) Ltd. (supra) held that mere fact that duty has been paid before issuance of show cause notice would not result into inapplication of Section 11AC and the penalty could still be imposed as long as various elements envisaged by Section 11AC are satisfied including presence of mens rea. In the present case it appears from the show cause notice that imposition of penalty was proposed under Rule 25 of the Rules read with Section 11AC of the Act. It is seen that shortage was detected during stock verification. Authorized signatory of the respondent company admitted the shortage and paid the duty immediately. But he failed to explain the reason for shortage. In any event, there is no material available to prove clandestine removal of the goods. Therefore, imposition of penalty under Rule 25 of the Rules read

with Section 11AC of the Act is not warranted. Hence, I do not find any reason to interfere with the Order of the Commissioner (Appeals). Accordingly, both the appeals filed by Revenue are rejected.

(Dictated & pronounced in the Open Court.)

(P.K. DAS)
MEMBER (JUDICIAL)

RK