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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/1876/2007 – SM[BR] Date 27/05/2009

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 MANGAL SPONGE & STEEL LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 489 / 2009 –SM[BR] dated 15.5.2009

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 MANGAL SPONGE & STEEL LTD.

BELHA, BILASPUR, C.G.

2. Adv. / Consult SHRI RAVI RAGHAVAN ADV.
B-6/10, SAFDARJUNG ENCLAVE
NEW DELHI-29.

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 AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Excise Appeal No.1876 of 2007 –SM (BR)

[Arising out of common Order-in-Appeal No.80/RPR-I/2007 dated 30.03.2007 passed by the Commissioner of Central Excise (Appeals), Raipur (C.G.)]

Date of Hearing:15.05.2009
Date of Decision:15.05.2009

For approval and signature:

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

1. Whether Press Reporters may be allowed to see CESTAT (Procedure) Rules, 1982.
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? :
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 (C.G.) ....Appellants
[Rep. by Shri S.K. Bhaskar, DR]

Vs.

M/s. Mangal Sponge & Steel Ltd. ...Respondent
[Rep. by Shri Ravi Raghavan, Advocate]

CORAM: **Mr. P.K. Das, Member (Judicial)**
Final Order No.......09.........../Dated:15.05.2009

Per P.K. Das:

After hearing both the sides and on perusal of the records, it is seen that the Central Excise Officers during stock verification at the respondent's factory detected shortage of finished goods involving Central Excise Duty of Rs.60,015/-. The Original Authority confirmed the demand of duty and appropriated the said amount as deposited by them and also imposed penalty of Rs1,000/-. The Revenue filed appeal before the Commissioner (Appeals) for imposition of penalty of equal amount of duty. The Commissioner (Appeals) enhanced penalty to Rs.10,000/- under Rule 25 of the Central Excise Rules, 2004.

2. In the impugned order, the Commissioner (Appeals) observed that there is no material on record to suggest that there was any element of mensrea on the part of the respondent. The shortage was detected during stock verification.

3. I find that there is no material available that the goods are cleared clandestinely. The Hon'ble Punjab & Haryana High Court in the case of Commissioner of Central Excise, Ludhiana Vs. Omkar Steel Tubes Pvt. Ltd. reported in 2008 (221) ELT 200 (P&H) held that penalty can be imposed as long as various elements envisaged by Section 11 AC of the Central Excise Act, 1944 are satisfied including presence of mensrea. It is already observed that in the present case, there is no material available of clandestine removal of the goods. So, I do not find any reason to interfere the order of the Commissioner (Appeals). Accordingly, the appeal filed by the Revenue is rejected.

[Order pronounced in open court on 15.05.2009.]

(P.K. Das)
Member (Judicial)

Ckp.