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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Appeal No. E/5950/2004 - EX[DB] Date 21/08/2009

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

To :
M/S ASWAD STEELS & ALLOYS PVT.LTD.
MEERUT ROAD,MUZAFFARNAGAR
U.P
247001

M/S ASWAD STEELS & ALLOYS PVT.LTD. Appellant
Vs
C.C.E.MEERUT-I Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 535/2009-**EX[DB]** dated 20-8-09 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
   C.C.E.MEERUT-I
   MANGAL PANDAY NAGAR MEERUT-1 U.P
   247001
2. Adv. / Consult
   MR.AALOK ARORA,ADV
   82-MISSION COMPOUND,SAHARANPUR (U.P.)

3 C.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
18 HON''BLE PRESIDENT

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing/decision: 18.8.2009

Central Excise Appeal No.5950 of 2004

Arising out of the order in original No.19/COMMR/mrt-i/2004 dated 29.10.2004 passed by the Commissioner , Central Excise, Meerut.

For Approval and Signature:

Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri B.S.V. Murthy, Member (Technical)

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	
2	Whether it should be released under Rule 27 of 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?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

M/s Aswad Steels & Alloys (P) Ltd. .... Appellant

Vs.

C.C.E., Meerut I .... Respondent

Appearance:

Shri Alok Arora, Advocate for the appellants/applicants
Shri K.P. Singh, Authorized Departmental Representative (DR) for the Revenue

Coram: Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri B.S.V. Murthy, Member (Technical)

FINAL Oral Order No. 535/09-EX.

Per B.S.V. Murthy:

The appellants are engaged in the manufacture of M.S. ingots availing central excise duty on the basis of annual production capacity fixed by the Commissioner with effect from 1.9.97 under Rule 96ZO(3). The dispute has arisen in this case because the Commissioner in the impugned order has not allowed the abatement of payment of central excise duty for the period during which the factory had remained closed from 1.9.97 to 22.9.97 and from 1.11.97 to 15.1.98.

2. The learned Advocate submits that the appellant does not use electric power supplied by the Electricity Board but the factory is run only with the help of D.G. Sets. Because of problems given by DG Sets, they had kept the factory closed and the factory was not working during the period from 28.7.97 to 21.9.97 and again from 1.11.97 to 15.1.98 and in respect of both the periods, intimations were given to the concerned Assistant Commissioner. He also submits that in respect of the first period of closure, they had written a letter dated 26.9.97 and on the body of the letter, the Assistant Commissioner had observed :

> ***" Abatement of first 15 days is given. However, deposit the duty for second fortnight completely and apply to Commissioner for refund of 7 days."***

He submits that Commissioner has rejected the claim for abatement on the ground that the Assistant Commissioner had no power to give abatement for 15 days, secondly, they had not fulfilled the requirement of Rule 96ZO(2) of Central Excise Rules since they had not given electric meter reading. However, it is his submission that they have not been given electric meter by the electricity board they were not using the power supplied by the electricity board.

3. Learned DR reiterates the ground of the Commissioner in the impugned order in support of his conclusion.

4. We have carefully considered the submissions made by both sides. The very fact that the Assistant Commissioner in the letter of the appellant on 26.9.97 had allowed abatement of 15 days shows that this was based on inspection of the factory and also takes us to conclusion that the factory was not functioning during the period and this was not disputed by the Revenue. Further, with regard to second period also the appellant had intimated on 31st October 1997 about the closure from 1.11.97. They had also intimated the closing balance and stock of MS ingots and also informed the Revenue

that they had started production again. We find only one condition under Rule 96ZO(2) that intimation regarding reading of the electricity meter to Assistant Commissioner, Central Excise with a copy to Range Superintendent , Central Excise, has not been fulfilled by the appellants. However, the appellants were not using power supply from electricity board and therefore, they could not have given electricity meter reading. Further, the intimation has not been challenged. We find that all other requirements have been fulfilled and the Department also is not contesting that factory had remained closed but the claim for abatement has been rejected only on the ground that reading of electricity meter has not been given to the Department. Under these circumstances, we consider that rejection was only on technical ground in view of the fact that factory was running only on DG sets and this is not disputed by the Department at all.

5. In view of above discussion, the impugned order is set aside and the appeal is allowed with consequential relief to the appellant.

(Justice R.M.S. Khandeparkar)
President

(B.S.V. Murthy)
Member (Technical)

scd/