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/3160/2007 – SM[BR] Date 02/12/2009

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

To :
C.C.E. LUCKNOW
7-A, ASHOK MARG, LUCKNOW.

C.C.E. LUCKNOW Appellant
Vs
M/S GLOBAL ALLOYS (P) LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1481/2009 –SM[BR] dated 30.11.2009 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 GLOBAL ALLOYS (P) LTD.
   B-59, UPSIDC INDUSTRIAL AREA, MALWAN, FATEHPUR (UP)
2. Adv. / Consult SHRI AMIT AWASTHI ADV.
   113/145, SWAROOP NAGAR KANPUR

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)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

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

COURT-III

Date of hearing/decision: 30.11.2009

Central Excise Appeal No.3160 of 2007-SM

Arising out of the order in appeal No.124-CE/07 dated 4.10.07 passed by the Commissioner (Appeals), Central Excise & Service Tax, Lucknow.

For Approval and Signature:

Hon'ble Shri M. Veeraiyan, 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?	Yes
2	Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
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

C.C.E., Lucknow ... Appellant

Vs.

M/s Global Alloys (P) Ltd. .... Respondent

Appearance:

Shri S.K. Bhaskar, Authorized Departmental Representative (JDR) for the Revenue and none for the respondent

Coram: Hon'ble Shri M. Veeraiyan, Member (Technical)

Oral Order No. 1481/2009 SM (PB)

Per M. Veeraiyan:

This is an appeal against the order of the Commissioner (Appeals) No. 124-CE/07 dated 4.10.07 by which the Commissioner (Appeals) has set aside the penalty of Rs.5,46,448/- imposed on the respondent.

2. Heard the learned DR. None appears for the respondent in spite of notice.

3. The relevant facts, in brief, are that the respondents failed to pay the duty for the month of February 2004 which was payable on or before 5.3.2004. Duty was paid on 6.5.04 and the interest was paid on 28.5.04. The original authority held that in view of delay in payment of the dues as above, in terms of Rule 8(3) of the Central Excise Rules, 2002, the clearances are deemed to be not duty paid and accordingly, the consequences and penalty as provided under Rule should follow and accordingly, imposed penalty. Commissioner (Appeals) set aside the entire penalty.

4. Learned DR submits that by not paying duty for February 2004 before the expiry of 30 days, the respondent has attracted the penal provision. He seeks setting aside the order of the Commissioner (Appeals) and restoring of the order of the original authority.

5. I have carefully considered the submissions and perused records. It is not a case of unaccounted production and clandestine removal. The respondents have admittedly entered the production in the record and cleared the same raising invoices as provided in the Central Excise Rules and they have also submitted the monthly returns. Undoubtedly, there was delay for payment of the dues and the same stands paid along with interest. Under these circumstances, imposition of equal amount as penalty treating the case as involving suppression, misstatement etc. under proviso to Rule 25 does not arise. However, the delay in payment beyond one month clearly attracts the provision of Rule 8(3) as submitted by the learned DR. The clearances are to be treated as non-duty paid. The implication of the provisions that consequences follow are that the said goods, if they were available, were also liable for seizure/confiscation. It is not the case that the goods have been seized or subject to confiscation. Nonetheless, there is deemed non-duty paid clearances and therefore, some penalty is warranted.

6. In view of the above, I set aside the order of the Commissioner (Appeals) and restore the order of the original authority. While restoring the order of the original authority, penalty of Rs.5,46,448/- imposed under Rule

25 is converted into penalty of Rs.5000/- only under Rule 27 of the Central Excise Rules, 2002.

7. The appeal is disposed of on the above terms.

(M. Veeraiyan)
Member (Technical)

scd/