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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/1041 - 1042/2008 – SM [BR] Date **05/01/2011**

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

To :
C.C.E. CHANDIGARH

C.R. BUILDING, PLOT NO. 19, SECTOR 17-C,
CHANDIGARH 160017
C.C.E. CHANDIGARH Appellant

Vs

M/S DOABA STEEL ROLLING MILLS Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 13 – 14 / 2011 –SM[BR] dated 3.11.2010 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 DOABA STEEL ROLLING MILLS
AMLOH ROAD,MANDI
GOBINDGARH.
2. Adv. / Consult
MR.SAURABH BASSI,ADV
GOLE MARKET, MANDI
GOBINDGARH
3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New Delhi
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
9. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
10. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd, LAW House, 1-8,Sector - 10, Faridabad 121003 (Haryana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
13. Office Copy
14. Guard file

Assistant Registrar
(SM Appeal Branch)

3. SH. NARINDER GOEL, DIRECTOR
M/S DOABA STEEL ROLLING MILLS
MANDI GOBINDGARH.

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
SINGLE MEMBER BENCH

Excise Appeal No.1041-1042 of 2008

(Arising out of Order-in-Appeal No.167-168/CE/CHD/2008 dated 20.8.07 passed by the CCE (A), Chandigarh

Date of Hearing: 03.11.2010
Date of Decision: 03.11.2010

For approval and signature:
Hon'ble Mr.Ashok Jindal, 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 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?	

CCE, Chandigarh — Appellant

Vs.

M/s.Doaba Steel Rolling Mills
Shri Narinder Goel, Director — Respondent

Present for the Appellant: Shri B.L.Soni, SDR
Present for the Respondent: None

Coram: Hon'ble Mr.Ashok Jindal, Member (Judicial)

Final **ORDER NO.** 13-14/2011 SM (Br)

PER: ASHOK JINDAL

The Revenue is in appeal against the impugned order dropping of penalty on the respondent firm under Section 11AC of Central Excise Act, 1944 and on the Director, Shri Narinder Goel holding that the ingredients of Section 11AC are not fulfilled. Hence, the penalty is not leviable on them.

2. The matter was listed for final hearing today, despite notice, neither anyone present nor any request for the adjournment has been received from the respondents.

3. It was also observed from the records that the matter was listed on several times earlier also and all the time, the matter was being adjourned for one pretext or the other and hence request for adjournment is denied. The matter is taken up for disposal on merits.

4. The brief facts of the case are that during the course of investigation in the factory premises of the respondents, the finished goods were found short and the statement of Shri Narinder Goel, Director was recorded. In his statement, he admitted that the shortage might have occurred due to pilferage/ mis-management by their internal staff and on these grounds a show cause notice was issued for demanding duty on the shortage of the finished goods and imposing penalties on the respondent firm as well as on the director of the respodnent firm under the provision of Central Excise Rules. The adjudicating authority confirmed the demand and imposed penalty on both the respondents. But on appeal, the lower appellate authority confirmed the demand and dropped the penalty holding that the suppression of facts has not been established by the department whether the respondents have any intention to evade duty. Aggrieved by the said order, the Revenue is in appeal against imposition of penalties on both the respondents.

5. Heard and considered.

6. I have examined the records and find that in this case it is admitted fact that the shortage was detected during the course of investigation and the same has been admitted by the Director of respondent firm (Shri Narinder Goel) and also admitted that the shortage might have occurred due to pilferage/ mis-management by their internal staff. This statement has not been retracted by the respondents. In that situation, the respondents are liable for penal action also. Accordingly, the penalty on the respondent firm under section 11AC is confirmed equal to the duty.

7. I have also seen from the adjudication order that no option was given to the respondents to pay 25% of duty amount as penalty as per proviso of 1 & 2 of Section 11 AC. I give the option to the respondents to pay 25% of duty as penalty within thirty days of receipt of this order as held by the Hon'ble High Court of Delhi in the case of M/s.K.P.Pouches (P) Ltd. failing which the respondents shall be liable to pay 100% duty as penalty.

8. As regards penalty imposed on the Director of respondents firm, the penalty on the respondents firm is confirmed. Taking lenient view, the penalty on the Director, Shri Narinder Goel is reduced to Rs.5,000/-.

9. With these observations, the appeals are disposed of.

(Pronounced in the open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

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