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/3342/2010 – SM[BR] E / STAY / 3122 / 2010 –SM[BR] Date **22/02/2011**

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

To :
M/S SHASHI CABLES LTD.

21, VIDHAN SABHA MARG, LUCKNOW.

226001

M/S SHASHI CABLES LTD., Appellant

Vs

C.C.E. LUCKNOW Respondent

I am directed to transmit herewith a certified copy of **Final order No. 130 /2011-SM[BR]&S/103/2011** dated 4.2.2011 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
C.C.E. LUCKNOW
7-A, ASHOK MARG, LUCKNOW.

2. Adv. / Consult
MR.PRAVEEN SHARMA
KF-84, KAVI NAGAR, GHAZIABAD

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New
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 -
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)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. III
Excise Stay Application No. 3122 of 2010 in Appeal No. 3342 of 2010 (SM)

M/s Shashi Cables Limited — Appellant

Versus

CCE, Lucknow — Respondent

Appearance

Shri Praveen Sharma, Advocate – for the appellant.

Shri Anil Khanna, Authorized Representative (SDR) – for the respondent.

CORAM : **Hon'ble Shri Rakesh Kumar, Member (Technical)**

DATE OF HEARING : 04/02/2011.

Final Order No. 130/2011-SM(BR) Dated : ____________
S-103/2011 SM(BR)

Per. Rakesh Kumar :-

While today this matter is listed only for stay after hearing the same, I am of the view there is no point in keeping this appeal pending and the appeal itself can be taken for final disposal. The facts leading to filing of this appeal and the stay application are, in brief, as under.

1.1 The appellant are engaged in the manufacture of ACSR Conductor, AAA Conductor and AA Conductor, Steel Standard Wire and Alloy Wire chargeable to Central Excise Duty. They avail Cenvat credit on the inputs and capital goods in terms of the provisions of Cenvat Credit Rules, 2004 the main inputs being Steel Standard Wire, Alloy Wire Rods and Aluminium Wire Rods. On 2/1/08, the appellant's factory was visited by the Jurisdictional Central Excise officers who while checking the stock of the cenvated inputs, found shortages in respect of the same – shortage of 21142.20 kgs. in respect of Steel Wire Rods and shortage of 4815 kg. in respect of Alloy Wire Rod. The total credit involved on the inputs found short was Rs. 2,39,973/- - Rs. 1,46,339/- in respect of Steel Wire Rods and Rs. 93,634/- Alloy Wire Rods). However, in respect of Aluminium Wire Rods, there was excess stock of 5892 kg. The appellant's representative at that time could not give any explanation for the huge shortage in the stock of cenvated Steel Wire Rod and Alloy Wire Rods and excess stock in respect of cenvated Aluminium Wire

Rods and hence the excess stock of Aluminium Wire Rods was placed under seizure. The Assistant Commissioner vide order-in-original dated 19/11/09 confirmed the Cenvat credit demand of Rs. 2,39,973/- in respect of shortage of Steel Wire Rods and Alloy Wire Rod and since these amounts had already been deposited prior to adjudication, the same were appropriated. Besides this, penalty of same amount i.e. Rs. 2,39,973/- was imposed on the appellant under Section 11AC of the Central Excise Act. The excess stock of Aluminium Wire Rods, which was valued at Rs. 6,75,518/- was ordered to be confiscated with option to be redeemed on payment of redemption fine of Rs. 1,70,000/- and on this count another penalty of Rs. 6,75,518/- was imposed on the appellant under Rule 15 (1) of the Cenvat Credit Rules, 2004.

1.2 Though the appellant filed an appeal before the Commissioner (Appeals) against this order of the Assistant Commissioner, they did not file any stay application. In view of this, the Commissioner (Appeals) vide order-in-appeal dated 27/07/2010 dismissed the appeal without going into the merits, for non-compliance of the provisions of Section 35F of Central Excise Act, 1944, as while the Cenvat credit demanded of Rs. 2,39,973/- had already been paid, the penalties imposed of Rs. 2,39,973/- and Rs. 6,75,518/- had not been paid. It is against this order of the Commissioner (Appeals), the present appeal and stay application have been filed.

2. Heard both the sides.

2.1 Shri Praveen Sharma, Advocate, the learned Counsel for the appellant pleaded that the stay application was not filed by the appellant before the Commissioner (Appeals) under wrong impression that since they had paid the entire duty amount, there was no necessity for the same while according to the provisions of Section 35F, the appellants were also required to pre-deposit, beside the duty demand confirmed, the penalties imposed also, that the Commissioner (Appeals) has not gone into the merits of the case and without considering their plea for waiver of the requirement of pre-deposit of penalty which are disproportionate to the nature of the offence, has dismissed their appeal. He, however, pleaded that he has no objection if the matter is remanded to the Commissioner (Appeals).

2.2 Shri Anil Khanna, the learned Departmental Representative, pleaded that there was huge shortage of cenvated inputs in the appellant's factory in respect of certain items of input and beside this, there was also huge excess stock in respect of other items of input, that in view of this, the penalties had been rightly imposed on the appellant and while filing appeal before Commissioner (Appeals), the appellant, in accordance with the provisions of Section 35F should have deposited the penalties imposed, also when the duty had already been paid, and that the Commissioner (Appeals) had rightly dismissed the appeal of the appellant for non-compliance of the provisions of Section 35F. He, however, stated that he has no objection to remand of this matter to Commissioner (Appeals) for decision on merit but remand should be made subject to pre-deposit of some amount of penalty.

3. I have carefully considered the submissions from both the sides.

4. The entire amount of Cenvat credit demand in respect of cenvated inputs found short had already been paid and there is

no dispute about this. Whether the penalty under Section 15 (2) of Cenvat Credit Rules, 2004 readwith Section 11AC of the Central Excise Act, 1944 was warranted in the circumstances of the case can be considered only in course of hearing of the appeals on merits. Beside this, I also find that the original Adjudicating Authority has imposed another penalty equal to the value of the excess stock in respect of cenvated inputs found excess which amounts to absolute confiscation of the goods. In view of this, the pre-deposit of the penalties is waived. The impugned order is set aside and the matter is remanded to the Commissioner (Appeals) for hearing the appeal on merits.

(Dictated and pronounced in open court.)

(Rakesh Kumar)
Member (Technical)

PK