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/1139/2011 – SM[BR] E / STAY/ 1456 /2011-SM[BR]** Date **08/09/2011**

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

To :
M/S CHANDRA METALS LTD.
1,2,5,6,7,14,18 & 19 MNNIT INDUSTRIAL ESTATE,
TELIARGANJ, ALLAHABAD (U.P.)

M/S CHANDRA METALS LTD. Appellant
Vs
C.C.E ALLAHABAD Respondent

I am directed to transmit herewith a certified copy of **Final order No. 584/2011-SM[BR]&S/511/2011** dated 29.8.2011 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 ALLAHABAD
38,M.G.MARG, CIVIL LINES,
ALLAHABAD

2. Adv. / Consult
MR.S.P. OJHA
299, BAGHAMBARI HOUSING SCHEME, ALLAHPUR, ALLAHABAD, (UP)

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. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi -
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

Assistant Registrar
(SM Appeal Branch)

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

COURT NO. II

E/STAY/1456/11-SM IN
CENTRAL EXCISE APPEAL NO. 1139/11-SM

[Arising out of Order-in-Appeal No. 03/CE/Alld/2011 dated 28.1.2011 passed by the Commissioner of Central Excise (Appeals), Allahabad]

Date of Hearing/decision: 29th August, 2011

For approval and signature:

Hon'ble Shri D.N. Panda, Judicial Member;

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?	

M/s. Chandra Metals Ltd., Appellant

Vs.

CCE, Allahabad Respondent

Present for the Appellant : Shri S.P. Ojha, Consultant
Present for the Respondent : Shri Anil Khanna, DR

Coram: Hon'ble Shri D.N. Panda, Judicial Member

FINAL ORDER NO. 584/2011 SM (BR) & **DATED**
S-511/2011 SM (BR)

Per D.N. Panda:

Learned Consultant appearing for the appellant submits that appellant has already paid duty which is appropriated and not disputed by Revenue. When this is the position, dispensing with pre-deposit appeal itself has been taken up for hearing by this common order.

2. Learned AR for Appellant explains that not only stock taking was erroneous which was done by just eye estimation but they did not look into the reasons of shortage of goods. He further submits that the loss of stock in process of manufacture is bound to be occurred for various reasons. Therefore, the authority has committed error to impose duty and penalty.

3. Learned DR on the other hand, supports the order of the authority below. There is no doubt that shortage of 3900 kgs. of stock was found during investigation. Section 14 evidence was also recorded on 23.10.2008 and 12.11.2008. The authorities noticed that the Managing Director of appellant company failed to explain the reason of shortage of stock in process. Record does not reveal about inventories made during the course of investigation. Investigation was conducted and even panchnama was drawn in the presence of the appellant. After 20 days of investigation the Managing Director again admitted about the discrepancy what that was stated on 23.10.2008. When no evidence came before the authority below statement recorded on above two dates became most reliable piece of evidence to hold adjudication proper which is evident from Para 12 of adjudication order. Therefore, appeal is dismissed in so far as duty demand is concerned.

4. Perusal of appeal record indicates that the appellant came forward to deposit duty of Rs. 3,02,560/- prior to adjudication. This enables the appellant to avail benefit of reduction in penalty by virtue of first and second proviso to Section 11AC of Central Excise Act, 1944. When such benefit was available to the assessee, the adjudicating authority fairly dealt the assessee granting option to pay penalty within the prescribed time. But the appellant failed to do so.

5. Conduct of the appellant indicates that paying duty, the appellant proceeded to seek relief before higher authority seeking remedy of appeal before such authority. This establishes that the appellant is entitled to get benefit of reduction in penalty when 'lis' ends. Accordingly it is ordered that if the appellant deposit 25% of duty amount within 30 days from today, it is entitled to reduction in penalty as envisaged by first and second proviso to Section 11AC of Central Excise Act, 1944. Failure to make deposit shall require the appellant to deposit entire penalty. Appeal is disposed confirming duty demand and reducing penalty to above extent subject to compliance to the order.

(Dictated & pronounced in the Open Court.)

(D.N. PANDA)
JUDICIAL MEMBER

RK