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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/2313 – 2314 / 2008 –SM[BR]** Date **22/09/2011**

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

To :
C.C.E. RAIPUR
CENTRAL EXCISE BUILDING, DHAMTARI ROAD,
TIKRAPARA, RAIPUR 492001.
C.C.E. RAIPUR Appellant

Vs

M/S MAHENDRA STEELS , Respondent

I am directed to transmit herewith a certified copy of **Final order No.631 -632 /2011-SM[BR]** dated 30.8.2011 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
1. **M/S MAHENDRA STEELS ,**
2. **M/S MAHENDRA STEELS.**
DADABADI, MG ROAD, RAIPUR,
(C.G.)

2. Adv. / Consult
NONE:--------------------

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. 2, R.K. Puram, NEW DELHI

COURT No. II

Excise Appeal No.2313 of 2008 & Excise Appeal 2314 of 2009 (SM)

[Arising out of Order-In-Appeal No.95/RPR-I/2008, dated 11.08.08 issued by CCE, Raipur.]

Date of Hearing / Decision : 30.08.2011.

For approval and signature:
Hon'ble Mr. 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?	

CCE, Raipur — Appellant

Versus

Mahendra Steels
Super Steel Rolling Mills — Respondent

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

Present for the Appellant - Ms. R.Jagdev, SDR
Present for Respondent - None.

Final **Order No.** 631-632/2011 SM (BR) **Dated :**

Per D.N. Panda:

None present for the respondents.

2. This is an appeal of Revenue against waiver of penalty of Rs.2,00,000/- under Rule 26 of Central Excise Rules, 2002 against Mahendra Steels in Appeal No.2313/08 and Rs.1,25,000/- against

Super Steel Rolling Mills in Appeal No.2314/08. The allegation of Revenue was that there was clandestine removal of excisable goods by issuance of parallel invoices. Statements were recorded from different persons and incriminating documents were recovered. No evidence led by respondent suggests that they were not connected to the principal who is Super Steel Rolling Mill. The adjudicating authority in the adjudication involved in appeal No.2314/08 has brought out how two respondents, i.e., Mahendra Steels and Super Steel Rolling Mills were connected by single roof management. Possible abetment of one with the other could not be ruled out by the respondents before Adjudicating Authority. Their abetment came to record from investigation done by the authorities. Granting personal hearing to the parties, the authority came to conclusion that when the goods were cleared by the questionable invoices and fraud was found to be modus operandi of questionable transactions, they were bought to the net of penalty. While elaborate examination of evidence was done in adjudication, ld. Appellate Authority without any good reason waived penalty. He was unable to appreciate role of Section 14 of Central Excise Act, 1944 which gives rise to primary, cogent and credible evidence as well as admissible in evidence, following the principle laid down by Apex Court in Kalvert Foods Pvt. Ltd. - 2011(270)ELT643. The appellate authority buried the same. Limitation does not come to rescue of evader. There was no retracted statement before the authorities to consider incredibility of statement recorded u/s 14 of the above said Act. The statement recorded in clear terms was cogent and credible evidence which received no consideration by the Appellate Authority while granting relief to the respondents.

3. The respondents have made a request for disposing the appeal on merits vide application dated 28.8.11. Ld. DR submits that when the Appellate Authority failed to understand result of investigation and also failed to understand role of statement recorded, the Appellate order calls for reversal and adjudication order deserve to be restored.

4. Heard Revenue and also perused the observation made in adjudication. Appellate order was based on ill considerations ignoring evidence on record. Therefore, there is nothing more to dilate the issue. Statement recorded at the preliminary stage having its truthfulness and investigation having gathered various evidence against the respondents, there is no scope to appreciate the first appeal order when echoing evidence on record whisper against conduct of respondents. Rather the first appellate order failed to understand the law relating to judicial proceeding. It would be proper to re-produce para 18 & 19 of the judgement of Apex Court in Kalvert Foods Pvt. Ltd. (supra) to appreciate how the statement made becomes basis and foundation in respect of clandestine removal cases to proceed against the assessee involved in such practice:

> *"18. During the course of arguments learned counsel appearing for the respondent submitted before us that although the*

aforesaid statements of Managing Director of the company and other persons were recorded during the course of judicial proceedings but the same were retracted statements, and therefore, they cannot be relied upon. However, the statements were recorded by the Central Excise Officers and they were not police officers. Therefore, such statements made by the Managing Director of the company and other persons containing all the details about the functioning of the company which could be made only with personal knowledge of the respondents and therefore, could not have been obtained through coercion or duress or through dictation. We see no reason why the aforesaid statements made in the circumstances of the case should not be considered, looked into and relied upon.

19. We are of the considered opinion that it is established from the record that the aforesaid statements were given by the concerned persons out of their own volition and there is no allegation of threat, force, coercion, duress or pressure being utilized by the officers to extract the statements which corroborated each other. Besides, the Managing Director of the company on his own volition deposited the amount of Rs.11 lakhs towards excise duty and therefore, in the facts and circumstance of the present case, the aforesaid statement of the counsel for the respondents cannot be accepted. This fact clearly proves the conclusion that the statements of the concerned persons were of their volition and not outcome of any duress." (Emphasis supplied)

5. In view of the aforesaid observations, Revenue succeeds in both the appeals and penalty levied by adjudication order is restored.

(Dictated and pronounced in the Open Court)

(D.N.Panda)
Judicial Member

RK-I