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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/1238/2011 – SM[BR] E / STAY / 1591 / 2011-SM[BR] **Date 15/11/2011**

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

To :
M/S M.L. AGARWAL STEEL & ALLOYS (P) LTD.,
VILLAGE-NAVA NAGAR, IGLAS ROAD, ALIGARH.

M/S M.L. AGARWAL STEEL & ALLOYS (P) LTD., Appellant
Vs
C.C.E. LUCKNOW Respondent

I am directed to transmit herewith a certified copy of **Final order No. 763/2011-SM[BR]&S/740/2011** dated 31.10.2011 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.RAJ KUMAR CA, FCA,
U-18, PAWAN PLACE, SAMAD ROAD, ALIGARH

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 (Harvana)
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)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. III

Excise Appeal No. 1238 of 2011-SM
Excise Stay Application No. 1591 of 2011-SM

[Arising out of Order-in-Appeal No. 04-CE-/LKO/2011 dated 21.2.2011 passed by the Commissioner of Central Excise (Appeals), Aliganj, Lucknow]

For approval and signature:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)

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1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? : No

2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : No

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

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M.L.
M/s. Agarwal Steel & Alloys (P) Ltd. Appellants

Vs.

Commissioner of Central Excise Respondent
Lucknow

Appearance:

Shri Raj Kumar, Chartered Accountant for the Appellants
Shri S.K. Panda, Jt. CDR for the Respondent

Date of Hearing/decision : 31.10.2011

Final **ORAL ORDER NO. 763/2011 SM(BR) &**

Per Archana Wadhwa : S-740/2011 SM(BR)

After dispensing with the condition of pre-deposit of penalty of Rs.1,38,729/-, as the appellants have deposited 25% out of said penalty, I proceed to decide the appeal itself inasmuch as ~~the~~ a short issue is involved.

2. After hearing both sides, I find that the proceedings for confirmation of demand of duty of Rs.1,38,729/- were initiated against the applicant-appellant on the allegations of clandestine removal of their final product, based upon the shortages found at the time of visit of the officers. As per facts on record, the appellants had not contested the said findings and deposited the entire duty of Rs.1,38,729/- along with penalty of 25% of the said duty amount even before the show cause notice could be adjudicated by the original adjudicating authority.

3. The said order of the original adjudicating authority was put to challenge before the Commissioner (Appeals) by the Revenue. Commissioner (Appeals) by taking note of Supreme Court judgement in the case of Dharamendra Textile[2008 (231) ELT 3], set aside the impugned order of Assistant Commissioner and remanded the matter to him for imposition of penalty to the extent of 100%. The Assistant Commissioner in remand proceedings imposed 100% penalty, without giving any option to the appellant for depositing 25% of penalty within a period of 30 days from passing of the said order, in terms of provisions of second proviso to Section 11AC. The said order was challenged before Commr(A) and the appellant submitted that as they have

already deposited 25% of penalty, the balance penalty be set aside. The appellate authority did not find favour with the above submissions of the appellants and upheld the entire penalty imposed. Hence, the present appeal.

4. No doubt, in terms of the Hon'ble Supreme Court decision in the case of Dharmendra Textile, penalty to the extent of 100% penalty amount is required to be imposed in terms of Section 11AC. As such, on this ground, no fault can be found in the order of the lower authorities. However, the second proviso to Section 11AC allows the assessee to deposit 25% of penalty within the period of 30 days from passing of the order in which case penalty automatically stand reduced to 25%. In the present case, the appellants had already deposited 25% of the penalty even before the adjudication order could be passed. In such a scenario, the imposition of penalty to the extent of 25% by first adjudication order was appropriate though technically he was required to impose 100% penalty and then extend option to assessee to pay 25% of penalty. However, in fact the penalty to the extent of 25% of penalty is required to be upheld against the appellant. Accordingly, penalty on the appellant is reduced to 25%.

5. Appeal is disposed of in the above terms.

(Pronounced in the open Court)

(Archana Wadhwa)
Member(Judicial)

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