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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/ 1017 , 1019 – 1020 / 2008 –SM[BR] Date 29/03/2010

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 H.S.STEELS (P) LTD Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 359 – 361 / 2010 –SM[BR] dated 12.3.2010 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 H.S.STEELS (P) LTD
AMLOH ROAD, MANDI GOBINDGARH.

[2] M/S MAHADEV STEEL INDUSTRIES AMLOH ROAD
MANDI GOBINDGARH
[3] SHRI NARESH JOSHI , PARTNER
M/S MAHADEV STEEL INDUSTRIES , MANDI GOBINDGARH

2. Adv. / Consult SHRI BIPIN GARG ADV.
B-1/1289-A, VASANT KUNJ NEW DELHI

3 S.D.R
~~4 J.C.D.R.~~
5 Bar association. CESTAT. New Delhi
6 Director Publications. Customs. Excise. I.P. Estate. New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 Raghuraman's 44-B. Regal Flat.Shipra Suncity. Indirapuram - 201010.Ghaziabad. DT. U.P.
10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11 M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
12 Taxindiaonline.com Pvt.Ltd. B-XI/8183.Vasant Kunj. New Delhi - 110070
13 Taxmann Allied Service Pvt Ltd.. 21/35. West Punjabi Bagh. New Delhi - 110026
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15
15 LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
16 Office Copy
17 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. 1017, 1019-1020 of 2008-SM(BR)

[Arising out of Order-in-Appeal No. 140-144/CE/CHD/ 2008 dated 15.2.2008 passed by Commissioner (Appeals), Central Excise, Chandigarh]

For approval and signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)

1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	:	yes
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:	yes
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

C.C.E., Chandigarh ... Appellants

Vs.

1. M/s. H.S.Steels (P) Ltd. .... Respondents
2. Mahadev Steel Industries
3. Shri Naresh Joshi

Appearance:

Shri S.K. Bhaskar, DR for the Appellants
Shri Manish Saharan, Advocate for the Respondent

Date of Hearing/decision : 12.3.2010

ORAL ORDER NO. 359 - 361 / 2010 SM(BR)

Per M. Veeraiyan:

These three appeals are by the Department arising out of common order-in-appeal No. 140-144/CE/CHD/ 2008 dated 15.2.2008 passed by the Commissioner (Appeals). There are other parties aggrieved by the order of the Commissioner (Appeals) and their appeals are not being dealt with in this order.

2. Heard both sides.

3. The relevant facts in Appeal No.1017/08 with Shri H.S. Steel (P) Ltd. as respondent is that the officers visited the factory premises on 23.9.03 and found shortage of MS ingots weighing 18.540MT and the Cenvat credit involved amounting to Rs.41,313/- was debited on the same date. Shri Raj Kumar, authorised signatory attributed shortage as 'burning loss'. The original authority while confirming the demand of duty imposed penalty of Rs.41,313/- under Rule 13 of Cenvat Credit Rules on the respondents which was set aside by the Commissioner (Appeals).

4. In Appeal No. E/1019/08 with M/s. Mahadev Steel Industries and E/1020/08 with Shri Naresh Joshi partner of M/s. Mahadev Steel Industries as respondents, the officers visited the factory premises on 26.9.2003 and found shortage of finished goods namely, Hot Rolled bars weighing 16.885 MT against the opening balance of 220.870 MT and no reason could be given by the partner. The duty involved amounting to Rs.44,250/- was debited on 27.9.2003. The original authority confirmed the demand of duty and imposed 44.250/- as penalty on the respondent firm under Rule 25 of the Central Excise Rules and also penalty of Rs.44,250/- on Shri Naresh

Joshi partner under Rule 126 of the Central Excise Rules. On appeal the penalties have been set aside by the Commissioner (Appeals).

5. Learned DR reiterated the grounds of appeal. The learned Advocate for the respondent strongly supports the order of the Commissioner (Appeals).

6. I have carefully gone through the submissions. It is noticed that the Commissioner has given finding that the demand has been made merely on the basis of shortage of inputs in the case of HS Steel Pvt. Ltd. and shortage of finished goods in the case of Mahadev Steel Industries as they have not been able to satisfactorily account for shortage, the duty stands paid by them. However, Commissioner (Appeals) has noticed that no other evidence has been cited by them by the Department to impose penalty on the finding of clandestine removal of inputs/ finished goods as held by the original authority. In view of the above, he came to the conclusion that these cases filed under the ambit of section 11A 2(b) of the Act, question of penalty in the present case does not arise. The grounds of appeal do not reveal any facts which can upset the finding of the Commissioner (Appeals). That these cases are covered under section 11A(2(B) of the Act. Therefore, I hold that no valid grounds have been adduced to interfere with the orders of the Commissioner (Appeals) in so far as the above respondents are concerned.

7. Appeals are therefore, rejected.

(M. Veeraiyan)
Member(Technical)

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