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

EXCISE APPEAL BRANCH

Date 16/07/2010

Appeal No. E/1276/2005 - EX[DB]

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

To :
C.C.E.LUDHIANA
F-BLOCK RISHI NAGAR LUDHIANA PUNJAB

C.C.E.LUDHIANA — Appellant

Vs

M/S GANPATI STEEL & AGRO INDUSTRIES. — Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 449 2010 EX[DB] dated 06-7-10 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
   M/S GANPATI STEEL & AGRO INDUSTRIES.
   G.T.ROAD ALLOUR KHANNA PUNJAB
2. Adv. / Consult
   NONE

3 C.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 Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 M/s. Deeparchie Publications, M-93, Marg, 46, Saket, New Delhi 110017
10 Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
11 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
12 LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
13 TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
14 Office Copy
15 Guard file
16. HON'BLE PRESIDENT.

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R. K. Puram, New Delhi.

Date of hearing/decision: 06.07.2010

For approval and signature:

Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri Rakesh Kumar, 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?	[illegible]
4	Whether Order is to be circulated to the Departmental authorities?	Yes

Excise Appeal No. 1276 of 2005

[Arising out of Order-in-Original No. 96/CE/JC(Ldh)/2004 dated 29.09.2004 passed by the Joint Commissioner, Central Excise, Ludhiana].

CCE, Ludhiana — Appellants

Vs.

M/s Ganpati Steel & Agro Industries — Respondent

Appearance: Shri Sunil Kumar, DR for the appellants.
None for the respondent.

Coram: Hon'ble Sh. Justice R.M.S. Khandeparkar, President
Hon'ble Sh. Rakesh Kumar, Member (Technical)

Final Oral Order No. 449/10-Ex

Per: Shri Justice R.M.S. Khandeparkar:

Heard the learned DR for the appellants. None present for the respondents though served.

2. This appeal arises from order dated 30.12.2004 passed by the Commissioner (Appeals) Ludhiana. By the impugned order, the appeal filed by the appellants has been disposed of by modifying the order passed by the Joint Commissioner. The Joint Commissioner by his order dated 28.09.2004 had ordered recovery of sum of Rs.6,02,133/- alongwith interest @ 18% per annum and equal amount of penalty imposed against the respondents on the ground of failure to pay the duty determined under compounded levy scheme within the prescribed time. Learned Commissioner (Appeals) on the contrary has held that duty liability was discharged within time and, therefore, there was no justification for the demand of interest or imposition of penalty.

3. The facts relevant for the decision are that the respondents were engaged in manufacture of hot rolled products of non alloy steel classifiable under Chapter 72 of the Central Excise Tariff Act, 1985. During the relevant period the respondents were working under the compounded levy scheme as described under Rule 97ZP(3) of the Central Excise Rules, 1944.

4. Initially the annual duty liability of the respondents was fixed by the Commissioner at Rs. 24,31,356/- and the monthly duty liability to be Rs. 2,02,613/- under order dated 27.02.98. The respondents were expected to discharge their monthly duty liability by 10th of each month. The said duty liability was finally determined under order dated 27.04.1998 at the same rate. Being dissatisfied, matter was carried in appeal before this Tribunal

and the Tribunal under its order dated 24.12.1998 set aside the said order and remanded the matter for re-determination.

5. On remand of the matter, the competent authority determined the duty liability provisionally under order dated 05.05.1999. The same was finalized on 09.02.2000. The differential duty which was required to be paid in terms of the difference between the duty amount fixed under final assessment and that under the provisional order was already deposited by the respondent in March 1999.

6. Referring to the orders dated 27.02.98 and 27.04.98, the proceedings were initiated against the respondents for recovery of interest and imposition of penalty on the ground that there was delay in payment of duty. The contention on behalf of the Department was accepted by the adjudicating authority under order dated 28.09.2004. The same however was set aside under the impugned order.

7. The Commissioner (Appeals) while holding that there was no liability to pay interest or occasion to impose penalty has referred to the fact that pursuant to setting aside of the order dated 27.04.1998 by the Tribunal, there were no valid subsisting order fixing duty liability against the respondent till 05.05.1999. Records clearly disclose that the provisional order dated 27.02.1998 had merged in the final order dated 27.04.98 whereby final determination of duty liability was done by the competent authority. However, the said order was set aside by the Tribunal by its order dated 24.12.1998 and matter was remanded for re-determination of the duty liability. Obviously, consequent to the order dated 24.12.1998 of the Tribunal, there was no subsisting order against the respondents fixing his

duty liability. It was only on 05.05.1999 that the competent authority provisionally decided the duty liability of the respondents. However, the required differential duty in terms of the provisional order was already deposited with the competent authority by the respondents in March 1999. Consequently, on 05.05.1999, the arrears of duty liability, if any, was on account of no fault of the assessee but entirely because there was no determination of such liability. In the absence of such determination of duty liability till 5.5.99, there was no occasion for the Department to demand any interest or penalty from the respondents as rightly held by the Commissioner (Appeals).

8. For the reasons stated above, therefore, there is no case for interference in the impugned order. The appeal fails and is hereby dismissed.

[Justice R.M.S. Khandeparkar]
President

[Rakesh Kumar]
Member [Technical]

/Pant/