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

Date 11/05/2010

Appeal No. E/534 /2010 – SM[BR] & E / STAY / 543 / 2010 –SM[BR]

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

To :
M/S KAMAKHYA STEELS PVT. LTD.
NAJIBABAD ROAD, BIJNOR (U.P.)
M/S KAMAKHYA STEELS PVT. LTD. Appellant
Vs
Respondent
C.C.E. MEERUT I

I am directed to transmit herewith a certified copy of **Final order** No.498 / 2010-SM[BR] & S /170 / 2010 dated 3.5.2010 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. MEERUT I
   EXCISE CHOWK,OPPOSITE CHOUDHARY CHARAN SINGH UNIVERSITY MANGAL PANDAY NAGAR, MEERUT - 250005.
2. Adv. / Consult
   MR.AALOK ARORA,ADV
   82-MISSION COMPOUND,SAHARANPUR (U.P.)
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. 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. Office Copy
14. Guard file
15. TAXINAOLINE. COM PVT. LTD. UNIT NO . 1, 2ND FLOOR, VASANT ARCADE, NELSON MANDELA ROAD, VASANT KUNJ NEW DELHI -70.

Assistant Registrar
(SM Appeal Branch)

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

Excise Stay Application No. 543 of 2010-SM(BR)
Excise Appeal No. 534 of 2010-SM(BR)

[Arising out of Order-in-Appeal No. 152/CE/MRT I/2009 dated 30.11.2009 passed by the Commissioner of Central Excise (Appeals), Meerut I (UP)]

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

M/s. Kamakhya Steel (P) Ltd. — Appellants

Vs.

Commissioner of Central Excise
Meerut I — Respondent

Appearance:

Shri Alok Arora, Advocate for the Appellants
Shri S. K. Bhaskar, JDR for the Respondent

Date of Hearing/decision : 3.5.2010

Final **ORAL ORDER NO.** 498/2010-SM(BR) &
Stay ORDER No: 170/2010-SM (BR)

Per M. Veeraiyan:

Heard both sides for a while on the stay petition.

2. Considering the nature of dispute, the stay petition is disposed of and the appeal itself is directed to be placed for final disposal.

3. When the officers visited the factory premises on 4.1.2008, they noticed the stock position of MS ingots, their final products as 225.155 MT and on physical verification, the stock was found to be only 126.675 MT, thus a shortage of 98.480 MT valued at Rs.18,71,120/- involving duty of Rs.3,08,361/-. The variation in stock in respect of runners risers was negligible. The authorised signatory, Shri Moizuddin Khan, in his statement dated 4.1.2008, admitted the shortage and submitted that he could not give any explanation for the shortage detected. However, on 21.1.2008, the entire duty involved was deposited and the same was intimated to the Department vide letter dated 26.2.2008. While replying to show cause notice vide letter dated 5.11.2008 it was claimed that they were recording the production figures on average basis and clearances were made on actual weighment basis and the officers arrived at the weight of stock by only weighing sample of ingots without weighing all the ingots which were available.

4. The original authority apart from confirming the demand of duty imposed equal amount as penalty under section 11AC read with Rule 25. The Commissioner (Appeals) has upheld the order of the original authority.

5. The learned Advocate submits that the method adopted by the Department in ascertaining the stock position is not valid. Since the shortage could not be explained, on instructions, he submits that they are not disputing the liability to duty. However, as no evidence of clandestine removal has been relied upon, imposition of penalty under section 11AC was not justified.

6. Learned DR reiterates the findings and reasoning of the Commissioner (Appeals).

7. I have carefully considered the submissions and perused the records. The method adopted by the Department in ascertaining the stock of goods appears to be more scientific than the method claimed to have been adopted by the appellant in maintaining the stock in their books of accounts. The stock variation is too huge to accept the explanation offered on behalf of the appellants. The appellants are under obligation to account for the disposal of the goods entered by them as having been manufactured in the daily production records. Since they have failed to discharge the said obligation, they were required to pay the duty involved on the shortages. The duty involved stands paid and the liability is not being disputed. However, the allegation of clandestine removal is a serious charge and requires corroboration. In the present case, no such evidence has been relied upon. However, Rule 25 (1) (b) of Central Excise Rules, 2002 envisages penalty on any assessee “who does not account for any excisable goods, manufactured and stored by him.” Since the appellants have by their own records, have manufactured the goods and stored them and failed to account

for the disposal of the same, they are liable to penalty not exceeding the duty involved on the goods. Thus, taking the entire facts and circumstances, of the case, including the extent of shortage of inputs into account, the penalty imposed is converted into a penalty under Rule 25 of Central Excise Rules, 2002 and the same is reduced from Rs.3,08,361/- to Rs.50,000/- (Rupees Fifty thousand only).

8. The appeal is disposed of by upholding the demand of duty as not contested and reducing the penalty to Rs.50,000/- (Rupees Fifty thousand only).

9. Stay petition is also disposed of.

(M. Veeraiyan)
Member(Technical)

ss