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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

Date 23/09/2010

Appeal No. E/1385/2010 – SM[BR] &E/ STAY /1416/2010-SM[BR]

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

To :
M/S. SHIVANGI METAL INDUSTRIES (P) LTD.

100/1, JAGANNATHPURI, MATHURA. Appellant

M/S. SHIVANGI METAL INDUSTRIES (P) LTD. Vs

Respondent

C.C.E. LUCKNOW

I am directed to transmit herewith a certified copy of **Final order** No.1033/2010-SM[BR]&S/451/2010 dated 14.9.2010 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. LUCKNOW
   7-A, ASHOK MARG, LUCKNOW.
2. Adv. / Consult
   MR.RAJ KUMAR, FCA
   U-18, PAWAN PLACE, SAMAD ROAD, ALIGARH

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 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

Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
SINGLE MEMBER BENCH
E/Stay/1416/10 in Appeal No.E/1385/10-SM

(Arising out of Order-in-Appeal No.40-CE/LKO/2010 dated 19.02.2010 passed by the Commissioner of Central Excise & Service (Appeals), Lucknow)

Date of Hearing/Decision:06.08.2010

M/s.Shivangi Metal Industries (P) Ltd. — Appellant
Vs.
CCE, Lucknow — Respondent

Present for the Appellant: Shri Raj Kumar, CA
Present for the Respondent: Shri S.R.Meena, SDR

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

Final **ORDER NO.** 1033/2010 SM (BR)
S-451/2010 SM(BR)

PER: D.N.PANDA

Both sides agree that duty was paid before adjudication. Learned AR fairly submits that his client requires the dispute to be resolved without further litigation. Therefore, he prays that limiting penalty to 25% of duty amount, the litigation may be brought to an end. Considering the fair approach of learned Counsel for the appellant, it would be proper to invoke forth proviso to Section 11AC of Central Excise Act, 1944 read with para 27 of judgment of Hon'ble High Court of Delhi in the case of K.P.Pauches (P) Ltd. vs. Union of India reported in 2008 (85) RLT 483 (Del.) which reads as under to limit the penalty to above extent.

"To obviate any similar situation from arising in future, we are of the opinion that in its adjudication order the adjudicating authority under the Act should explicitly state the options available to the Assessee under Section 11AC of the Act. Once the choices are made known to the Assessee and it still does not take advantage of the first proviso to Section 11AC of the Act, it will be entirely as its own peril. Therefore, it would be beneficial,

both from the point of view of the Revenue as well as the Assessee, if the options available to the Assessee are mentioned in the adjudication order itself.

2. It may be stated that Hon'ble Gujarat High Court in the case of Commissioner of Customs & Central Excise, Surat-II vs. Gopal Fibres Pvt.Ltd. reported in 2009 (256) ELT 10 (Guj.) has also directed that the assessee should get option by way of speaking order of adjudication to exercise such option for concession in penalty limiting that to 25% of duty.

3. In view of above, penalty is reduced to 25% of the duty amount and waiving the requirement of pre-deposit, appeal is also disposed of.

(D.N.Panda)
Judicial Member

mk