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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/1016 & 1018 / 2008 -SM[BR] Date 08/11/2010

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 SEECO STEEL ROLLING MILLS Respondent

- I am directed to transmit herewith a certified copy of **Final order No.**1164 – 1165 / 2010-SM[BR] dated 12.10.2010

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

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Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent

1. M/S SEECO STEEL ROLLING MILLS
2. SHRI VINAY KUMAR , PARTNER
AMLOH ROAD, 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 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.
BENCH-SM

Date of Hearing/Decision:12.10.2010

Excise Appeal No. E/1016 & 1018/08-SM

[Arising out of Order-in-Appeal No.140-144/CE/CHD/2008 dated 15.02.2008 passed by the Commissioner (Appeals), Central Excise, Chandigarh]

For approval and signature:

HON'BLE Mr. ASHOK JINDAL, MEMBER (JUDICIAL)

1	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3	Whether Their Lordships wish to see the fair copy of the Order?	
4	Whether Order is to be circulated to the Departmental authorities?	

CCE, Chandigarh ...Appellant

Vs.

Seeco Steel Rolling Mills
Shri Vijay Kumar, Partner of Seeco Steel Rolling Mills ... Respondent

Present for the Appellant :Shri. R.K.Gupta, SDR
Present for the Respondent:Shri.Bipin Garg, Advocate

Coram: HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)

Final **ORDER NO.** 1164-1165/2010 SM (Br) **DATED:12.10.2010**

PER: ASHOK JINDAL

The short issue involved in this case is whether the penalty is leviable on both the respondents in the facts and circumstances of the case.

2. The facts of the case are like that on inspection of premises of respondent, shortage of input were found and the same was admitted by the partner Shri Vinay Kumar that there might be removal of goods without mentioning in the Central Excise register. The lower appellate authority has dropped the penalty on the ground that the duty has been paid before the issuance of show cause notice. Hence no penalty is leviable under section 11AC.

3. Heard both sides.

4. After considering the submissions, I find that it is a case of admission by the respondent No.2 that there might be removal of goods without showing in the Central Excise Register. Hence in such a situation, the ingredients of section 11AC of Central Excise Act 1944 are fulfilled. Accordingly the respondent is liable to pay penalty equivalent to the duty confirmed. Further I observe that the adjudicating authority has not given the option to the respondent to pay 25% of the duty confirmed as penalty as per proviso 1 and 2 of section 11AC of the Central Excise Act, 1944. I give the option to the respondents to pay 25% of the duty confirmed as penalty within 30 days of the communication of this order as held by the Hon'ble High Court of Delhi in the case of K.P. Pouches (P) Ltd. vs. Union of India reported in 2008 (228) ELT 31 Delhi. Failing which the appellant shall be liable to pay 100% duty confirmed as penalty. In regard to penalty on the respondent No.2 Shri Vinay Kumar , I find that the Hon'ble High Court of Bombay has held in the case of Commissioner of Customs

(E.P.) vs. Jupitor Exports reported in 2007 (213) E.L.T. 641 (Bom.) held that when the penalty on the appellant firm has been confirmed, no separate penalty is leviable on the partner. Accordingly, the impugned order is confirmed with regard to dropping the penalty on Shri Vinay Kumar. With this observation appeal is partly allowed.

[Dictated & Pronounced in the open Court].

(ASHOK JINDAL)
MEMBER (JUDICIAL)

Anita