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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/2661/2008 – SM[BR] Date 09/11/2010

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

To :
M/S AST PEPES PVT. LTD.

B-33, BSR ROAD, INDL. AREA, GHAZIABAD.

M/S AST PEPES PVT. LTD. Appellant

Vs

C.C.E. GHAZIABAD Respondent

I am directed to transmit herewith a certified copy of **Final order No.**1187 / 2010 –SM[BR] dated 22.10.2010 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. GHAZIABAD

 C.G. O. COMPLEX-II, KAMLA NEHRU NAGAR, GHAZIABAD 201302

2. Adv. / Consult

 MR.RAJESH CHHIBBER

 FA/9, NEW KAVI NAGAR, GHAZIABAD

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

Excise Appeal No.2661 of 2008
(Arising out of Order-in-Appeal No.174-CE/GZB/2008 dated 29.8.08 passed by the CCE(A), Ghaziabad)

Date of Hearing: 22.10.2010
Date of Decision: 22.10.2010

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?	

M/s.A.S.T. Pipes P.Ltd. Appellant

Vs.

CCE, Ghaziabad Respondent

Present for the Appellant: Shri Rajesh Chhibber, Advocate
Present for the Respondent: Shri Anil Khanna, SDR

Coram: Hon'ble Mr.Ashok Jindal, Member (Judicial)

Final **ORDER NO.** 1187/2010 SM Br

PER: ASHOK JINDAL

The appellant has filed this appeal against the imposition of penalty under Section 11AC of Central Excise Act, 1944 read with Rule 25 of Central Excise Rules, 2002.

2. The facts of the case are that during the course of visit in the factory premises of the appellant, the preventive officers found that they have taken cenvat credit on the basis of invoices

physically not received the goods. There were some shortages and other materials also found in their factory. The appellant reversed the credit taken on the shortages on pointing out by the preventive officers. But the adjudicating authority while adjudicating the case, the penalty under Section 11AC read Rule 25 ibid was imposed. On appeal, the lower appellate authority also imposed the penalty under Section 11AC and reduced the penalty to Rs.3.50 lakhs. Aggrieved by the said order, the appellant is in appeal.

3. The learned Advocate for the appellant submits that they have explained the reasons of shortages at the time of visit of the preventive officers that they are receiving HR coil from SAIL as they have received invoices, the goods are yet to be received by them within four weeks. They have entered the inputs in the statutory records. Later on they received the goods. For their shortages, he has stated that GI pipe are being captively used in their factory for construction of shed and other raw material, namely, zinc ash. They have also explained the shortages to the preventive officers as well as in their reply to the show cause notice. He finally submits that they are not disputing the duty liability but they are disputing that the shortages have been explained to the satisfaction of the authorities, the penalty under Section 11AC ibid is not required to be imposed in the absence of fraud, collusion, wilful mi-statement or suppression of facts or contravention of any provisions of law.

4. On the other hand, learned DR drew my attention to the adjudication order and in the adjudication order in para 4.6, the adjudicating observed as under:

(i) *H.R.COIL: I find that the party's representative Shri Ashish Asgarwal, Factory Manager, in his statement dated 18.12.06, recorded under Section 14 of Central Excise Act, 1944, has accepted the shortage of 192.960 M.T.'s of H.R.Coil and Skelp (Assorted). Shri Ashish Agarwal, Factory Manager has again accepted aforesaid shortage in his statement dated 04.06.07. In contrast to aforesaid admissions made twice on 18.12.06 and 04.06.07; the party in their defence reply dated 23.07.07 has come up with the plea that the reasons for aforesaid shortages were because of the duty paying documents of the inputs were received before the receipt of inputs in the factory. In this regard, I find that the party could not produce any documentary evidence showing the receipt of goods at any subsequent date. I feel that in case the goods were received on any subsequent date, they would have been able to produce any transport documents/gate register entry etc. showing as proof for their aforesaid plea. In absence of any such evidence, I hold that their plea is an after thought and merits for rejection.*

(ii) *G.I.PIPES: I find that the party's representative Shri Ashish Agarwal, Factory Manager, in his statement dated 18.12.06, recorded under Section 14 of Central Excise Act, 1944, has accepted the shortage of 91.755 M.T.'s of G.I.Pipes. Shri Ashish Agarwal, Factory Manager in his statement dated 04.06.07 has come up with the plea that aforesaid goods have been captively used in their factory for the construction of shed. This was also reiterated in their defence reply dated 23.07.07. I find that the party neither could show me any entry made in their RG-1 register indicating captive use of the aforesaid goods nor any internal document evidencing aforesaid submission has been produced before me in support of their defence. I*

therefore hold that their plea is an after thought and merits for rejection.

(iii) *ZINC ASH: I find that the party's representative Shri Ashish Agarwal, Factory Manager, in his statement dated 18.12.06, recorded under Section 14 of Central Excise Act, 1944, has accepted the shortage of 44.650 M.T.'s of Zinc Ash. Shri Ashish Agarwal, Factory Manager in his statement dated 04.06.07 has come up with the plea that aforesaid goods might be lost due to winds. I find that the excisable goods even if lost due to natural causes are liable for discharge of Central Excise duty unless and until remission is claimed by the party. In these circumstances, I find that the party has rightly admitted the shortages and debited the CE duty as due in as much as no remission has been claimed by them till the time of checking conducted on 18.12.2006.*

(iv) *M.S.TUBES: The party has not given any plea on the shortage detected in the stock of this item. However, the shortage of 72.856 M.T.'s in the stock of the said item is suggestive of the fact the party has also cleared the same without payment of Central Excise duty and they have rightly debited the Central Excise duty as due at the time of checking on 18.12.2006.*

5. Hence the penalty has been rightly imposed on the appellant.

6. Heard and considered.

7. I have gone through the adjudication order. In the adjudication order, the adjudicating authority has clearly observed that the appellant has failed to produce any evidence in support of their defence. Accordingly, they have been imposed penalty for contravention of the provisions of law with

intent to evade payment of duty. Learned Advocate for the appellant also shows the documents in support of their defence. Hence, in the interest of natural justice, it would be proper that the same should be examined by the adjudicating authority again. In the circumstances, I have no option except to remand the matter to the original authority to examine the documents produced by the appellant in support of their defence and to pass the order accordingly.

8. With these observations, the matter is remanded back to the original authority after setting aside the impugned order. The adjudicating authority shall decide the issue in view of the above discussion after giving a reasonable opportunity to the appellant to present their case.

(ASHOK JINDAL)
MEMBER (JUDICIAL)

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