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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/2658/2008 – SM[BR] Date 09/11/2010

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

To :
M/S L.M. STEELS P. LTD

B-11, BSR ROAD INDL AREA, GHAZIABAD.

M/S L.M/ STEELS P. LTD Appellant

Vs

C.C.E. GHAZIABAD Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1188 / 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.2658 of 2008
(Arising out of Order-in-Appeal No.183-CE/APPL/GZB/2008 dated 22.9.08 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.L.M.Steels 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.** 1188/2010 SM (BR)

PER: ASHOK JINDAL

By this appeal, the appellant is challenging the imposition of penalty under Section 11AC of Central Excise Act, 1944.

2. The brief facts of the case are that during the visit of the preventive officers in the factory premises of the appellant, shortages of finished goods and inputs were detected. On all those shortages, the appellant has paid duty. Thereafter a show

cause notice was issued for appropriation of the duty demand and a proposal for imposition of penalty under Rule 25 read with Section 11AC ibid. The same were confirmed by the adjudicating authority. On appeal before the Commissioner (Appeals), a finding was given that the facts placed on records do not suggest any clandestine removal of the goods but he confirmed penalty under Section 11AC ibid and reduced penalty to 25% as per the proviso 1 and 2 of the said Act. Aggrieved by the said order, the appellant is in appeal.

3. The learned Advocate for the appellant submits that they are manufacturers of HR Plates and Patra of MS steel and in their trade they have set formula for sending inputs in the process of manufacture and resultant product. On the basis of that formula they debited the inputs in their account and accounted the finished goods as per that formula. There is no weighment being done while issuing input and while entering in their statutory records. But on pointing out by the department, they paid duty. There is no finding against the appellant that they were involved in the activity of clandestine removal of goods and in the absence of fraud, collusion, wilful mis-statement or suppression of facts or contravention of provisions of the Act or the Rules with intent to evade payment of duty, the penalty under Section 11AC ibid cannot be imposed.

4. On the other hand, learned SDR reiterated the adjudication order and submitted that in the impugned order, the lower appellate authority has imposed penalty on the appellant for contravention of the law.

5. Heard both sides and perused the records.

6. On careful examination of the submission made by both sides, I find that there is imposition of penalty on the appellant under Section 11AC ibid. First it is to be as ascertained whether the duty has been evaded for the reasons fraud, collusion, wilful mis-statement or suppression of facts or contravention of provisions of the Act or the Rules. In this case, there is clear cut finding by the lower appellate authority that there is no evidence on records that the appellants engaged in the activity of clandestine removal of the goods. The shortages during the course of visit of the preventive officers have been explained by the appellant as per their entries in the records. I find that the ingredients of Section 11AC have not been invoked and in the absence of ingredients -fraud, collusion, wilful mis-statement or suppression of facts or contravention of provisions of the Act or the Rules, no penalty can be attracted under Section 11AC. Hence, in the facts and circumstances of the case, the penalty under Section 11AC is not warranted. Accordingly, the impugned order confirming the penalty is set aside and the demand is confirmed.

7. With these observations, the appeal is partly disposed of with consequential relief to the appellant.

(ASHOK JINDAL)
MEMBER (JUDICIAL)

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