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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/163 /2010 – SM[BR] & E / STAY / 158 /2010-SM[BR] Date 30/07/2010

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

To :
M/S. KRISHNA METAL INDUSTRIES
F-7, MANDOLI INDUSTRIAL AREA, SHAHDARA, DELHI-110095.

M/S. KRISHNA METAL INDUSTRIES Appellant
Vs
C.C.E. DELHI II Respondent

I am directed to transmit herewith a certified copy of **Final order** No.855 /2010-SM[BR]&S/333/2010 dated 20.7.2010 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. DELHI II
   C.R. BUILDING, I.P. ESTATE, NEW DELHI 110002
2. Adv. / Consult
   MR.NAVEEN MULLICK,ADV
   B-388, MEERA BAGH, N.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:20.07.2010

Excise Stay No.158/10-SM in
Excise Appeal No.163/10-SM

[Arising out of Order-in-Appeal No.201/CE/DLH/2009 dated 8.10.2009 passed by the Commissioner (Appeals), Delhi-II].

M/s. Krishna Metal Industries ...Appellant

Vs.

CCE, Delhi-II ... Respondent

Present for the Appellant :Shri.Naveen Mullick, Advocate
Present for the Respondent:Shri.I. Baig, SDR

Coram: HON'BLE MR.DN.PANDA, JUDICIAL MEMBER

Final **ORDER NO.** 855/2010 SM(BR) & S-333/2010 SM(BR) **DATED:20.07.2010**

PER: D.N.PANDA

Ld. Counsel Shri Naveen Mullick submits that this assessee has closed his business for three years. Some discrepancy was noticed by Investigation team on 03.06.06 at 8.10 hours. Records maintained in the factory itself can prove that the goods were accounted for. Due to lack of opportunity, no reconciliation being made, charge of clandestine removal was made. If the appellant gets an opportunity for reconciliation, such a charge may not sustain. The present appeal is against the imposition of penalty of Rs.50,000/- only. Shri Mullick explains, that the goods were lying in the factory for which there was no demand of duty nor even payment of redemption fine was warranted since goods were not removed.

2. Ld. DR explains the position clearly stating that confiscation of goods valued at Rs.11,88,300/- and Rs.15,000/- made on 3.6.2006 was due to seizure operation. The moment goods are seized, confiscation was done and that belongs to Union of India. If the appellant wants to take possession of the same, there should be discharge of duty liability as well as redemption fine followed by penalty for breach of law. However, claim of the appellant being that they can satisfy the adjudicating authority by proper reconciliation, the appellant may not be denied such an opportunity.

3. Heard both sides and perused the records.

4. Considering averment of the assessee that it is prepared to cooperate with Revenue for reconciliation of the discrepancy noticed in the course of search, it would be proper to dispense with the pre-deposit and remit back the matter to the ld. Adjudicating Authority for granting an opportunity to the appellant to reconcile the discrepancies alleged by show-cause-notice. Usually Tribunal does not prefer to remand the matter, when there is concurrent finding. But this is the case where ld. Counsel prays for leniency in view of closure of the business for three years and records are available for reconciliation. The matter is therefore remanded to the learned Adjudicating Authority without expression of any opinion on the

consequence of law that shall follow upon re-adjudication of the matter.

5. The appellant shall appear before the ld. Adjudicating Authority on **25th August, 2010** and make an application for fixation of date of hearing. Upon fixation of date of hearing, the assessee may lead evidence and plead defence before that authority. Failure on the part of the appellant to appear on the stipulated date before the Adjudicating authority shall render the re-adjudication ex-parte without grant of further opportunity. Ld. Authority shall pass appropriate order in accordance with law. Consequently, the first appellate order is set aside and the matter is remanded for re-adjudication by ld. Adjudicating Authority.

[Dictated & Pronounced in the open Court].

(D.N.PANDA)
JUDICIAL MEMBER

Anita