**TELEGRAM : CEGCANAL**
**Website : www.cestat.gov.in**

**REGISTERED / AD**
**Email : delhi@cestat.gov.in**

# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

**PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066**

**EXCISE APPEAL BRANCH**

Appeal No. E/968 /2005 - EX[DB] Date **24/02/2011**

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

To :
M/S GANPATI INDUSTRIES LTD.

A-3/1 UPSIDC,INDUSTRIAL AREA ORAI

**M/S GANPATI INDUSTRIES LTD.** Appellant

Vs

**C.C.E. KANPUR** Respondent

I am directed to transmit herewith a certified copy of **Final order No. 201/ 2011 EX[DB]** dated 25-1-11 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(Excise Appeal Branch)

**Copy to :**

1. Respondent
**C.C.E. KANPUR**
117/7, SARVODAYA NAGAR,
KANPUR 208005.

2. Adv. / Consult
**MR.AMIT AWASTHI**
H-1, IST FLOOR, RADHEY APPARTMENT
PLOT NO. 7/116A, SWAROOP NAGAR,
KANPUR-208002

3. C.D.R
4. Bar association. CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New Delhi
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. M/s. Deeparchie Publications, M-93. Marg. 46, Saket, New Delhi 110017
9. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
10. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
13. Office Copy
14. Guard file
15. HON'BLE PRESIDENT

Assistant Registrar
(Excise Appeal Branch)

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**
**West Block No. 2, R.K. Puram, New Delhi – 110 066.**

**COURT NO. I**

**Excise Appeal No. 968 of 2005**

[Arising out of the Order-in-Original No. 02/Comm/Tech./2004 dated 09/12/2004 passed by The Commissioner, Central Excise, Kanpur.]

For Approval and signature :
**Hon'ble Shri Justice R.M.S. Khandeparkar, President**
**Hon'ble Shri Rakesh Kumar, Member (Technical)**

| | | |
|---|---|---|
| 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 would 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 Department Authorities? | : |

M/s Ganpati Industries Limited — Appellant

Versus

CCE, Kanpur — Respondent

**Appearance**

None – for the appellant.

Shri S.R. Meena, Authorized Representative (DR) - for the Respondent.

CORAM : **Hon'ble Shri Justice R.M.S. Khandeparkar, President**
**Hon'ble Shri Rakesh Kumar, Member (Technical)**

**DATE OF HEARING : 25/01/2011.**
**DATE OF DECISION : 25/01/2011.**

Final Order No. 201/2011- EX Dated : ____________

**Per. Rakesh Kumar :-**

The appellant are manufacturers of MS Ingots chargeable to Central Excise Duty. During the period of dispute,they were functioning under the compounded levy scheme of Section 3A of Central Excise Act, 1944 readwith Rule 96 ZO (1) to 96 ZO (4) of the Central Excise Rules, 1944. During the period of dispute, Section 3A (1) of the Central Excise Act, 1944 empowered the Central Government to notify the goods, having regard to the nature of process of manufacture or production, the extent of evasion of duty in regard to such goods or such other factors, as may be relevant, for a special procedure for discharge of duty liability based on annual capacity of production. Sub-Section (3) of Section 3A provided that duty of excise on the goods so notified shall be levied at such rate, as the Government may prescribe by notification. Proviso to sub-Section (3) provided that where a factory producing notified goods did not produce the notified goods during any continuous period of not less than 7 days, the duty calculated on proportionate basis shall be abated in respect of such period if the manufacturer of such goods fulfils such conditions as may be prescribed. The MS Ingots being manufactured by the appellant have been notified under Section 3A (1) of the Central Excise Act and in this regard a special procedure, as detailed in Rule 96 ZO (1) to 96 ZO (4) has been prescribed. As regards the abatement for the period of non-production of not less than 7 days, sub-Rule (2) of Rule 96 ZO prescribes certain conditions – one of the main condition being that the manufacturer shall inform in writing about the closure to the Jurisdictional Assistant Commissioner with a copy to the Range Officer either prior of the date of closure or on the date of closure and while giving such intimation he shall also intimate the reading of the electricity meter. Similarly, this sub-rule also provides that when the manufacturer re-starts the production, he shall inform in writing about the starting of production to the Jurisdictional Assistant Commissioner with the copy to the Range Superintendent. In this case, the appellant had stopped production due to certain reasons during the period from 28/5/98 to 11/6/98 and 20/6/98 to 30/6/98 and had re-started the production on 12/6/98 and 1/7/98 respectively. With regard to stopping of production on 28/5/98, the required intimation alongwith the electricity meter reading was given to the Assistant Commissioner on 28/5/98 and copy of the intimation was given to the Range Officer on 29/5/98. As regards the stopping of the production on 20/6/98, the required intimation was given by the appellant to the Assistant Commissioner on 21/6/98 and the copy of the intimation was sent to the Range Officer on 22/6/98. The Commissioner vide order-in-original dated 9/12/04, however, allowed the abatement only for the period from 29/5/98 to 11/6/98 and from 22/6/98 to 30/6/98 and as such he did not allow the abatement for 28/5/98 for the first period of stoppage and for 20/6/98 and 21/6/98 in respect of second period of stoppage. Appellant has filed this appeal against the

Commissioner's order disallowing the abatement for 28/5/98 and 21/6/98.

2. Heard both the sides.

3. None appeared for the appellant though the intimation about the hearing had been sent well in advance.

4. Heard Shri S.R. Meena, the learned Departmental Representative, who defended the impugned order by reiterating the findings of the Commissioner and emphasised that since in terms of the provisions of Rule 96 ZO (2), the appellant were required to inform about the stoppage of the production one day in advance and since they failed to do so, the Commissioner has rightly disallowed abatement for $28^{th}$ May 1998 and $20^{th}$ and $21^{st}$ June, 1998.

5. We have carefully considered the submissions of the learned Departmental Representative and have gone through the memorandum of appeal filed by the appellant.

6. For claiming abatement regarding stoppage of production, the assessee, as per the provisions of Rule 96 ZO (2), has to inform the Jurisdictional Assistant Commissioner with a copy to the Range Superintendent either prior to the date of closure or on the date of closure alongwith the electricity meter reading. In this case, the first period of stoppage of production was from 28/5/98 to 11/6/98 and there is no dispute that the intimation regarding stoppage of production alongwith the reading of the electricity

meter had been given to the Jurisdictional Assistant Commissioner on 28/5/98, though the copy of the intimation given to the Assistant Commissioner was submitted to the Range Officer only on the next day. The Assistant Commissioner has confirmed that the necessary intimation had been received in his office on 28/5/98, the date on which the production had been stopped. Rule 96 ZO (2) requires intimation regarding closure either prior to the date of closure or on the date of closure. Since, in this case, the intimation regarding the closure had been given on 28/5/98 alongwith the electricity meter reading, the Commissioner's order disallowing the abatement for 28/5/98 is not correct.

7. As regards the second period of stoppage of production from 20/6/98 to 30/6/98, the plea of the appellant is that the production had been stopped on 20/6/98 due to disconnection of the electricity and this fact has been confirmed by the Assistant Engineer, Electricity Distribution. However, the intimation regarding the stoppage of production of production had been submitted to the Assistant Commissioner on 21/6/98 alongwith the meter reading and its copy had been sent to the Range Officer on 22/6/98. Since the necessary intimation regarding closure had been given on 21/6/98 alongwith the reading of the electricity meter and since as mentioned above, the requirement of Rule 96 ZO (2) is giving the intimation either prior to the date of closure or on the date of closure and since in this case, the intimation about closure was given only on 21/6/98, while the

factory had closed since 20/6/98, the Commissioner has rightly denied the abatement for 20/6/98, which has not been disputed by the Appellant, but the Commissioner's order disallowing abatement for 21st June 1998 is not correct as the intimation regarding stoppage of production had been given to Assistant Commissioner on 21/6/98.

8. In view of the above discussion in respect of first period of stoppage, the abatement is allowed for 28/5/98 and in respect of second period of stoppage of production, the abatement is allowed for 21/6/98. The impugned order stands modified, as above. The appeal is, therefore, allowed.

(Operative part of the order pronounced in the open court.)

**(Justice R.M.S. Khandeparkar)**
**President**

**(Rakesh Kumar)**
**Member (Technical)**

PK