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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK NO.2, R.K.PURAM, NEW DELHI-110066
EXCISE APPEAL BRANCH

Dated: **31/10/2012**

To

1. Appellant as per address in table below

2. Respondent as per address in table below

Final Order No. **A/1249/2012-EX|DB|** dated **18/10/2012**

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section **35-C(1) of the Central Excise and Salt Act, 1944.**

Assistant Registrar
EXCISE Appeal Branch

S.No	Application	Appeal	Name and Address of Appellant	Name and Address of Respondent
1.		E/1128/2005	**BANTA SINGH KARTAR SINGH IRON MILLS** Steel Rolling Mills Mandi Gobindgarh	**C.C.E.CHANDIGARH** Plot No-19,Sector-C,Chandigarh

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Copy To
1. Advocate(s) / Consultant(s):

Balbir Singh
Mastan & Co., C-5/9,
Safdarjung Enclave,
New Delhi,
Delhi

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2. C.D.R 3. Office Copy 4. Guard File

5. Bar Association, CESTAT, Delhi **6.** Director Publications, Customs, Excise. I.P. Estate, Delhi

7. M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

8. Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

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, Satellite Road, Ahmedabad-15

11. LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

12. TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

13. Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Ameer Pet, Hyderabad – 500038

Assistant Registrar
EXCISE Appeal Branch

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

COURT NO. I

DATE OF HEARING/DECISION : 18/10/2012.

Excise Appeal No. 1128 of 2005

[Arising out of the Order-in-Appeal No. 13/CE/CHD/2005 dated 24/01/2005 passed by The Commissioner of Central Excise (Appeal), Chandigarh.]

Hon'ble Shri Justice Ajit Bharihoke, 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 Banta Singh Kartar Singh]
Iron & Steel Rolling Mills] Appellant

Versus

CCE, Chandigarh Respondent

Appearance

Shri Rupender Singh, Advocate – for the Appellant.

Shri R.K. Verma, Authorized Representative (DR) – for the Respondent.

CORAM : **Hon'ble Shri Justice Ajit Bharihoke, President**
Hon'ble Shri Rakesh Kumar, Member (Technical)

FINAL Oral Order No. A/1249/2012-EX(BR)

Per. Shri Rakesh Kumar :-

The appellant are a rolling mill. They have two rolling mills, which are operated by a common drive. On the basis of various parameters of the rolling mills, the Commissioner vide order dated 27/4/98 determined their annual capacity of production in terms of the provisions of Hot re-rolled Re-rolling Mill Capacity Determination Rules, 1997 as 10594.508 M.T. and on this basis, their monthly duty liability was determined as Rs. 2,64,863/-. Against this, the appellant during April 1998 to June 1998 period paid the duty of only Rs. 2,04,000/- per month and, thus, there was short payment of duty to the tune of Rs. 5,90,588/- for which a show cause notice was issued for its recovery alongwith interest and imposition of penalty. The show cause notice was adjudicated by the Additional Commissioner vide order-in-original dated 30th March 2004 by which the duty demand of Rs. 5,90,588/- was confirmed alongwith interest and beside this, penalty of equal amount was imposed under Rule 96 ZP (3). On appeal to Commissioner (Appeals), this order of the Additional Commissioner was upheld by the Commissioner (Appeals) vide order-in-appeal dated 24/1/05 against which this appeal has been filed before the Tribunal.

2. Heard both the sides.

3. Shri Rupender Singh, Advocate, the learned Counsel for the appellant, has taken us through the impugned order and submitted that duty demand has been confirmed against the appellant and his appeal has been rejected solely on the ground that annual capacity of production as determined by the Commissioner vide order dated 27/4/98 was 10,594.508 M.T., ignoring the fact that the aforesaid order determining the capacity was under challenge and pleaded that the appeal filed against the fixation of annual capacity of production was allowed by the Tribunal and the Tribunal reduced the capacity determined by the Commissioner to Rs. 6201.79 M.T. and the appeal filed by the Department against the aforesaid order has been dismissed by Hon'ble High Court vide its judgment reported in **2010 (253) E.L.T. 765 (P&H)**. Thus, it is contended that the impugned order based upon the wrong annual capacity of production is not sustainable and is liable to be set aside.

4. Shri R.K. Verma, learned DR, pleaded that the Commissioner had determined the capacity of production as 10594.508 M.T. by invoking Rule 5 of the Capacity Determination Rule, which provides that if the annual production of the rolling mill for the year 1996-1997 is more than the capacity determined under sub-Rule (3) of Rule 3, then the annual capacity of the rolling mill would be deemed to be the actual production of the year 1996-1997, that since there were two mills being operated by a common drive and at a time only one mill was being operated, and by operating in this manner, the actual production

of the appellant during 1996-1997 was 10594.508 M.T., there is noting wrong in the Commissioner's decision determining 10594.508 M.T. as the annual capacity of production of the appellant unit by invoking Rule 5, that the Apex Court in the case of **CCE, Chandigarh vs. Doaba Steel Rolling Mills** reported in **2011 (269) E.L.T. 298 (S.C.)** has held that the provisions of Rule 5 have overriding effect and if the capacity determined under Rule 3 (3) is less than the actual production of the unit during 1996-1997, the annual capacity of production of the unit would be deemed to be the actual production during 1996-1997. He, therefore, pleaded that the duty demand has been correctly upheld.

5. We have carefully considered the submissions from both the sides and perused the record.

6. The basis of the duty demand against the appellant and imposition of penalty is the Commissioner's order dated 27/4/98 determining the annual capacity of production of the appellant unit as 10594.508 M.T. However, we find that this order had been challenged before the Tribunal and the Tribunal vide final order No. 868/2005-EX dated 28/9/05 has accepted the appeal holding that the annual capacity of product of the mill shall be 6201.79 M.T. and not 10594.508 M.T. as determined in the Commissioner's order dated 27/4/98. We also find that the Department had filed an appeal to Hon'ble Punjab & Haryana High Court against this order of the Tribunal and Hon'ble High Court has dismissed the Department's appeal. While confirming

the duty demand the Commissioner (Appeals) has not taken into account the order of the Hon'ble Punjab & Haryana High Court upholding the Tribunal's order. In view of this, the impugned order is not sustainable. The same is set aside and the matter is remanded to Commissioner (Appeals) for denovo decision in the light of the judgment of the Tribunal as upheld by Hon'ble Punjab & Haryana High Court after giving the opportunity of hearing to the party.

(Dictated and pronounced in the open court.)

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

PK