REGISTERED / AD

FAX : 011-26108426

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

Dated: **03/12/2012**

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **A/1346/2012-EX[DB]** dated **12/11/2012**

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.**

Asstt. Registrar(EXCISE Appeal Branch)

Application	Appeal	Name and Address of Appellant
1	E/3272/2009	**SACO ALLOYS PVT. LTD.** A-806A, Industrial Area, Phase-II, Bhiwadi
		Name and Address of Respondent
2		**C.C.E. JAIPUR I** N.C.R.Building, Statue Circle, "C" Scheme, jaipur 302005.

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Copy To
3Advocate(s) / Consultant(s): SH. R, SANTHANAM, ADV. C/O
Abhishek Jaju,Advocate
F-78, FF, LAJPAT NAGAR-II,
NEW DELHI,
DELHI
110024

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4 Bar Association, CESTAT, Delhi

5 Director Publications, Customs, Excise. I.P. Estate, Delhi

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

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

8 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

9 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

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

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

12 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

13 C.D.R. 14 Office Copy 15 Guard File

Asstt. Registrar(EXCISE Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH, NEW DELHI.

Date of hearing/Decision :12.11.2012

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?	

Excise Appeal No.E/3272 of 2009

(Arising out of Order-in-Appeal No.205(DK)CE/JPR-I/2009 dated 31.08.2009 passed by the Commissioner of Central Excise(Appeals), Jaipur).

M/s.Saco Alloys Pvt. Ltd. ...Appellant

Vs.

CCE,Jaipur-I ...Respondent

Appearance: Shri R. Santhanam, Advocate for the appellant.
Shri A.K. Jain, Joint CDR for the respondent.

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

Final Order No.A/1346/2012-Ex(BR)

Per Rakesh Kumar:

The appellants are manufacturers of M.S. Ingots. The period of dispute is 1.9.97 to 31.3.2000. They were operating under Compounded Levy Scheme of Rule 96 ZO. The appellant were required to discharge duty liability for each fortnight of the month by due date. However, there was delay in payment of duty for certain fortnights which was however paid with interest much earlier the issue of show cause notice. However, the department issued a sow cause notice in view of Rule 96 ZO(3) which provided for imposition of penalty equal to the duty payable in case the duty is not paid by due date. This show cause notice was adjudicated by the Dy. Commissioner vide order dated 11.3.2002 by which the total penalty of Rs.52,00,000/- was imposed on the appellant under Rule 96ZO(3). On appeal to the Commissioner (Appeals), the Commissioner (Appeals) dismissed the appeal on the ground of non-compliance of the requirement of pre-deposit under Section 35 F. On appeal being filed before the Tribunal against the Commissioner (Appeals)'s order dated 10.06.2004, the Tribunal vide Final Order No.439/08 dated 9.7.2008 set aside the order-in-appeal passed by the Commissioner (Appeals) and remanded the matter for disposal on merits. On de novo adjudication by the Commissioner (Appeals), the

Commissioner (Appeals) vide order-in-appeal dated 31.08.2009 upheld the imposition of penalty of Rs.52,00,000/- in terms of Rule 96 ZO (3) of the Central Excise Rules. Against this order of the Commissioner (Appeals), this appeal has been filed.

2. Heard both the sides.

3. Shri R. Santhanam, Advocate, ld. Counsel for the appellant pleaded that though the Apex Court in the case of **Dharamendra Textiles Processors** reported in **2008 (231) ELT 3 (SC)** had held that in terms of the provisions of Rule 96ZO(3) in the event of failure of the appellant to discharge the duty liability by due date, the penalty equal to the duty payable shall be imposed, the Apex Court had left the question of vires to the respective High Courts, that vires of Rule 96ZO (3) was challenged before the Hon'ble P&H High Court in the case **Bansal Allloys & Metals Pvt. Ltd.** which vide judgement reported in **2010(260)ELT 343 (P&H)** has held that this rule to be ultra vires, that same view has been taken by the Gujarat High Court in the case of **Krishna Processors Vs. Union of India** reported in **2012 (280) ELT 186 (Gujarat)**, that in view of this, the imposition of penalty equal to the duty payable under Rule 96ZO just for a few days after delay in payment of duty is not justified, more so, when the entire duty had been paid along with interest long before the issue of show cause notice. He,

therefore, pleaded that the impugned order is not sustainable in view of the above mentioned judgments.

4. Shri A.K. Jain, ld. Joint CDR defended the impugned order by reiterating the Commissioner (Appeals)'s findings in it.

5. We have considered the rival contentions and perused the records. It is not disputed that the relevant Rule 96ZO(3) of Central Excise Rules have been held ultra vires by Hon'ble P&H High Court in the case of **Bansal Alloys & Metals (supra)** and same view has been taken by Hon'ble Gujarat High Court in the case of **Krishna Processors Vs. Union of India (supra).** In view of the above decisions of the P&H High Court as well as Gujarat High Court, we do not find merit in the impugned order sustaining imposition of penalty of equal amount of excise duty paid after the due date. As such the appeal is allowed and the impugned order imposing penalty is set aside .

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

Ckp.