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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

Appeal No. : E/2059/2005-EX[DB]

Dated: **30/07/2012**

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

AKANKSHA STEELS P. LTD.
Sambhal, U.P.

AKANKSHA STEELS P. LTD. (Appellant)

VS

C.C.E. MEERUT II (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **A/879/2012-EX|DB|** dated **24/07/2012** passed by the Tribunal under section **35-C(1) of the Central Excise and Salt Act, 1944.**

Assistant Registrar
EXCISE Appeal Branch

Copy To,
1. Respondent
C.C.E. MEERUT II
Opp. Saheed Park (Near Ashok ki Lat) Delhi
Road, Meerut (UP)

2. Advocate(s) / Consultant(s):
Rajesh Chhibber
FA/9, New Kavi Nagar, Ghaziabad

3. C.D.R
4. Bar Association, CESTAT, New Delhi

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

6. M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp. ICICI Bank of Defence Colony, 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, Above Star India Bazar, Satellite Road, Ahmedabad-15

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

11. TaxIndiaOnline.com Pvt. Ltd., Unit No. 1, 2nd Floor, Vasant Arcade, Nelson Mandela Road, Vasant Kunj, New Delhi - 110070

12, OFFICE COPY
13. GAURD FILE

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing/decision: 24.7.2012

Central Excise Appeal No.2059 of 2005

Arising out of the order in original No.03/Com/M-II/2005 dated 22/24.3.2005 passed by the Commissioner, Central Excise , Meerut II.

Hon'ble Mr. Justice Ajit Bharihoke, President
Hon'ble Mr. Rakesh Kumar, Technical Member

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 26 of the CESTAT (Procedure) Rules, 1982?	
2	Whether it should be released under Rule 26 of 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 Akansha Steels Pvt. Ltd. .. Appellant

Vs.

C.C.E., Meerut II ... Respondent

Present for the appellant : Shri Rajesh Chhibber, Advocate

Present for the respondent : Shri R.K.Verma, A.R.

FINAL Order No. A/879/2012-EX(BR)

Per Mr. Rakesh Kumar (Oral):

The appellant manufactures ingots and billets chargeable to central excise duty. During the period of dispute they were paying duty under compounded levy scheme under Rule 96 ZO(3). The appellant during the period of dispute did not discharge the duty liability by the due date for the an reason ~~that~~ in accordance with the provisions of Rule 96ZO(3), the Commissioner vide his order in original dated 22/24.3.2005 imposed penalty of Rs.25 ,66,669/- on the appellant for their failure to discharge duty liability by the due date. Against this order of Commissioner , this appeal has been filed.

2. Heard both the sides.

3. Shri Rajesh Chhibber, Advocate, the learned Counsel for the appellant pleaded that though the Apex Court in the case of Union of India vs. Dharmendra Textile Processors - 2008 (231) ELT 3 (SC) had held that the adjudicating authority have no discretion to impose lower penalty for the assessees' failure to discharge the duty liability under Rule 96ZO, however, in that judgment the Apex Court left vires of this Rule open to be challenged. The vires of this Rule was challenged before Hon'ble Punjab & Haryana High Court and the Hon'ble High Court in the case of Bansal Alloys & Metals Pvt. Ltd. vs. UOI - 2010 (260) ELT 343 (P & H) holding ~~that~~ this rule to be ultravires observed that adjudicating authority have discretion to impose lower penalty in the case of failure of the assessee to discharge duty liability by due date. The same view has been taken by the Hon'ble Gujarat High Court in the case of Krishna Processors vs. UOI reported in 2012 (280) ELT 186 (Guj.); ~~that~~ in this case therefore the Commissioner's order imposing penalty equal to the duty paid after due date is not correct particularly when almost entire interest on late payment of duty was deposited before issue of show cause notice. Thus he has pressed for setting aside the impugned order.

4. Shri R.K. Verma, learned A.R. for the Revenue on the contrary has argued in support of the impugned order. He has pleaded that the judgment of Punjab & Haryana High Court is not applicable in this case for the reason that in subsequent matter titled Commissioner of Central Excise, Mumbai vs. Sunil Silk Mills - 2011 (267) ELT 438 (SC) ~~and~~ the Supreme Court relying

upon the judgment of the Supreme Court in the matter of Dharmendra Textile Processors (supra) has held that under Rule 96 ZO(3), the adjudicating authority has no discretion in reducing the penalty and the penalty must be imposed equal to the duty determined under Section 11AC of the Central Excise Act, 1944.

5. We have considered the rival submissions. As regards the judgment relied upon by the learned A.R. for the Revenue, we may note that in the matter of Dharmendra Textile Processors (supra) the Supreme Court while interpreting the Rule left the question pertaining to vires of Rule 96ZO(3) open. In the judgment relied upon by the Department the vires relating to rule was not under question and the judgment of Punjab & Haryana High Court in the matter Bansal Alloys and Metals Pvt. Ltd. (supra) was not brought to the notice of the Supreme Court. Thus in our view the judgment of Supreme Court in the matter of C.C.E., Mumbai vs. Sunil Silk Mills is of no help to the Department.

6. In the matter of Bansal Alloys & Steel Pvt. Ltd. (supra), Punjab and Haryana High Court held that the impugned Rule 96ZO(3) of the Central Excise Rules to the extent of providing for mandatory ~~of~~ minimum penalty without any *men rea* and without any element of discretion is excessive and unreasonable restriction on fundamental rights is arbitrary. Hon'ble High Court further observed that, moreover, exercise of such power by way of subordinate legislation is not permissible when rule making authority for levying penalty is limited to default "with intent to evade duty". The aforesaid finding by implication means that the adjudicating authority have discretion to impose lower penalty in case of failure of the assessee to discharge the obligation of duty liability by the due date. In the instant case, admittedly the excise duty was paid by the appellant though after due date but the payment was made much before issue of show cause notice. Thus we do not find any

justification for imposing penalty equivalent to duty not paid within due date. Accordingly, taking into account the overall facts of the case, penalty imposed on the appellant is reduced to Rs.1,00,000/- (rupees one lakh).

6. Appeal is disposed of in aforesaid terms.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Technical Member

scd/