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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

CROSS Application No. : E/CROSS/19/2006
Appeal No. : E/2603/2005-EX[DB]

Dated: **09/08/2012**

Assistant Registrar
C.E.S.T.A.T. New Delhi
To,
C.C.E.JAIPUR-I
N.C.R.B.Statue Circle C-Scheme Jaipur

C.C.E.JAIPUR-I (Appellant)

VS

SEWA STEEL ROLLING PVT.LTD. (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **A/906/2012-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
SEWA STEEL ROLLING PVT.LTD.
E-90(C)RLLCO Industrial Area Bhiwadi
Rajasthan

2. Advocate(s) / Consultant(s): SH. R. SANTHANAM, ADV,
C-3/210, JANAK PURI,
N. DELHI-58

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

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Assistant Registrar
EXCISE Appeal Branch

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing/ decision: 24.07.2012

Hon'ble Sh. Justice Ajit Bharihoke, President
Hon'ble Sh. 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 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. 2603 of 2005 & C.O. No. 19 of 2006

(Arising out of order-in-Appeal No.88-90(MPM)/CE/JPR-I/2005 dated 09.05.2005 passed by the Commissioner (Appeals-I) Central Excise, Jaipur).

CCE, Jaipur — Appellants

Vs.

M/s Sewa Steel Rolling Pvt. Ltd. — Respondent

Present Shri R.K. Verma, AR for the appellant.
None for the respondent.

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

FINAL Order No. A/906/2012-EX(BR)

Per. Justice Ajit Bharihoke (Oral):

The appeal is filed by the revenue against the order-in-appeal No. 88-89(MPM)/CE/JPR-I/2005 dated 28.03.2005 whereby the Commissioner (Appeals) while accepting the appeal of the assessee against the order-in-original reduced the penalty to Rs. 5,00,000/-.

2. The respondent is engaged in manufacture of non alloy steel ingots falling under chapter sub-heading 7206.90 of the schedule to the Central Excise Tariff Act, 1985. The respondent was working under compounded levy scheme under Section 3A of the Central Excise Act, 1944. Under the scheme the respondent was required to pay excise duty amounting to Rs. 5,00,000/- in two equal instalment in a month. The first instalment of Rs. 2.5 lacs was required to be paid by 15th day of each month and second instalment of equal amount was required to be paid latest by the last day of the month.

3. During April 1998 to March 2000 period, the Respondent failed to discharge of the fortnightly duty liability by due date on a number of occasions. Total duty where payment which had been delay was Rs. 57 lakhs.

4. The respondent were served with three show cause notices dated 25.06.99, 01.02.2000 and 17.11.2000 for recovery of interest on the aforesaid default in payment of excise duty and also for imposition of penalty upon the respondent under Rule 96ZO(3) of the Central Excise Rules, 1944.

5. The show cause notices were adjudicated by the jurisdictional authority vide common order-in-original No. 325-27/2001-02 (DEM) dated 28.03.2002 whereby the adjudicating authority ordered recovery of interest in respect of default in payment of excise duty on due date and imposed penalty amounting to Rs.57,00,000/-.

6. The respondent preferred an appeal against the order-in-original and the Commissioner (Appeals) vide impugned order dated 28.03.2005 accepted the plea of the respondent and reduced the penalty to Rs. 5,00,000/-. Feeling aggrieved of the aforesaid order-in-appeal, department has preferred this appeal.

7. Sh. R.K. Verma, ld. AR for the revenue has pleaded that the Commissioner (Appeals) has grossly erred in relying upon the judgement in the matter of **Machino Montell (P) Ltd. -2004 (62) RLT 709 (LB) and Rastriya Ispat Nigam Ltd. -2004 (163) ELT A153-SC** ignoring the fact that those judgements relate to different set of rules. It is further contended that legality of Rule 96ZO and Section 3A has been upheld by the Apex Court in the matter of **Union of India vs. Supreme Steels and General Mills reported in 2001 (133) ELT 513 (SC)** and **Commissioner vs. Venus Castings (P) Ltd. -2000 (117) ELT 273 (SC).** Ld. AR further submits that the impugned order is not sustainable in law because under the relevant rule 96ZO the adjudicating authority has no discretion but to impose penalty equal to such outstanding amount of duty or Rs. 5,000/- whichever is greater. Thus, ld. AR has urged us to set aside the impugned order in appeal and restore the order-in-original.

8. Notice to the respondent has been received back undelivered with the report that address is not correct. No other address of the respondent is available on record, therefore, the respondent cannot be served with the notice without undue delay and expense. Accordingly, we are constrained to proceed ex-parte order against the respondent.

9. We have considered the submission made by ld. AR and perused the record as also the judgment relied upon by him. At the outset, we may note that in

neither of the judgments relied upon by the Department the vires of Rule 96ZO was put to test. In the matter of **Union of India vs. Dharmendra Textile Processors reported in 2008 (231) ELT 3 (SC)**, the Supreme Court while holding that under 3rd proviso to Rule 96ZO of Central Excise Rule, 1944 the adjudicating authority has no option or discretion in reducing the penalty to the amount less than the duty not short paid, kept the issue of vires of Rule 96ZO open. The vires of Rule 96ZO(3) of Central Excise Rules, was challenged in Punjab & Haryana High Court in the matter of **Bansal Alloys & Metals Pvt. Ltd. vs. Union of India reported in 2011 (104) RLTONLINE 101 (P&H)** wherein it was held that the aforesaid rule to the extent of providing mandatory minimum penalty without any mens rea and without any element of discretion is excessive and unreasonable restriction on fundamental rights and 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".

10. In view of the aforesaid judgment of Punjab & Haryana High Court , we are of the view that Commissioner (Appeals), in absence of cogent evidence to indicate the intention on the part of assessee to evade excise duty, was justified in reducing the penalty to Rs. 5,00,000/-. Thus, we do not find any infirmity in the impugned order which may call for interference by the Tribunal in appeal. Appeal is accordingly dismissed.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

Pant