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केन्द्रीय उत्पाद शुल्क एवम सेवा कर आयुक्तालय , भावनगर
OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE & SERVICE TAX

प्लॉट नं. 6776-बी/1, 'सिद्धि सदन' बिल्डिंग,
PLOT NO. 6776/B-1, "SIDDHI SADAN" BUILDING,
नारायण उपाध्याय मार्ग, भावनगर-364001
NARAYAN UPADHYAY MARG, BHAVNAGAR-364 001.

दूरभाष : (0278) 2523627 फ़ैक्स : 0278-2513086

रजिस्टर्ड डाक पावती द्वारा

By R.P.A.D.

फाईल सं. V.72/3-68/D/2000-CX.3
F. No.

आदेश की तारीख : 12/03/2012

Date of Order :

जारी करने की तारीख : 12/03/2012

Date of Issue :

पारितकर्ता

Passed by

श्री एन के भुजबल

SHRI N. K. BHUJABAL

आयुक्त , केन्द्रीय उत्पाद शुल्क एवम सेवा कर, भावनगर

Commissioner , Central Excise and Service Tax, Bhavnagar

मूल आदेश संख्या Order-in-Original No : 12 to 19/BVR/Commissioner/2012

1. आदेश की यह प्रति जिसको जारी किया गया है उनके व्यक्तिगत उपयोग के लिए निःशुल्क भेजी जा रही है ।

1. This copy of order is granted free of charges for private use of the person(s) to whom it is issued and sent.

2. यदि कोई व्यक्ति इस आदेश से स्वयं को असंतुष्ट अनुभव करता है , तो इस आदेश के विरुद्ध सीमा शुल्क , केन्द्रीय उत्पाद शुल्क एवं सेवा कर अपीलीय प्राधिकरण , ओ-20 , मेघानी नगर , नया मानसिक अस्पताल संकुल , अहमदाबाद को केन्द्रीय उत्पाद शुल्क अधिनियम की धारा 35-बी की उपधारा 1(a) की शर्तों के आधार पर अपील कर सकता है । धारा 35-बी (1) (परंतुक) (a) से (d) के अंतर्गत मामले जैसे कि हानि , छूट , बॉण्ड के अंतर्गत निर्यात , शुल्क क्रेडिट के मामले , आवेदन के पुनरीक्षण के मामलों में आवेदन भारत सरकार के संयुक्त सचिव , राजस्व विभाग , वित्त मंत्रालय , नई दिल्ली को बंधनकर्ता रहेगा ।

2. Any person(s) deeming himself aggrieved by this Order may appeal against this order to The Customs, Excise and Service Tax Appellate Tribunal, West Zonal Bench, Ahmedabad, O-20, Meghani Nagar, New Mental Hospital Compound, Ahmedabad, in terms of the provision of Section 35B(1)(a) of the Central Excise Act, 1944. If the case covered under the category specified in Section 35B(1) (Proviso) (a) to (d), i.e. Loss, Rebate, Export under Bond, duty credit cases, the Revision application shall lie to the Joint Secretary to the Government of India, Department of Revenue, Ministry of Finance, New Delhi.

3. अपील फॉर्म E.A.-3 में केन्द्रीय उत्पाद शुल्क (अपील) नियम , 2001 के नियम 3 के उपनियम 2 में विनिर्दिष्ट व्यक्ति द्वारा की जानी चाहिए ।

3. The Appeal should be filed in form EA.-3. It shall be signed by the person as specified in Rule 3(2) of the Central Excise (Appeals) Rules, 2001.

4. केन्द्रीय उत्पाद शुल्क अधिनियम , 1944 की धारा 35-B के अंतर्गत अपील इस आदेश की प्राप्ति के तीन माह के अंदर दर्ज करवानी होगी ।

4. The appeal should be filed within three months from the date of communication of this order. (Section 35B of the Central Excise Act, 1944).

5. यह अपील चार प्रतियों में दाखिल की जाए और जिसके विरुद्ध अपील की गई है , उस आदेश की समस्त संख्या में प्रतियां संलग्न की जाए (इन में से कम से कम एक प्रति अधिप्रमाणित होनी चाहिए) । उक्त अपील के समर्थक सभी दस्तावेज चार प्रतियों में दाखिल किए जाए ।



5. It shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (One of which at least shall be certified copy). All supporting documents of the appeal should be forwarded in quadruplicate. The appeal shall be presented in person to the Register or sent by Registered Post addressed to the Registrar. But the date of receipt in office of the said Registrar in time or otherwise will be the relevant date for the purposes of limitation of time.

6. फीस का भुगतान न्यायाधिकरण की पीठ के सहायक रजिस्ट्रार के पक्ष में रेखांकित बैंक ड्राफ्ट द्वारा अधिनियम के प्रावधानों के अंतर्गत करना अपेक्षित है। यह ड्राफ्ट जहाँ पीठ स्थित है, किसी राष्ट्रीयकृत बैंक की किसी शाखा के नाम पर जारी किया जाए और उस उक्त अपील प्रपत्र के साथ डिमाण्ड ड्राफ्ट संलग्न किया जाना चाहिए।

6. The Fee is required to be paid as under through a cross Bank Draft in favour of the Assistant Registrar of Bench of the Tribunal on a branch of any Nationalized Bank located at the place where the Bench is situated and it shall be attached to the form of appeal.

- (क) जहाँ पर मांगा गया शुल्क ब्याज और दण्ड रूपए 50,00,000/- (रूपए पचास लाख) से ज्यादा हो, रु. 10,000/- (रूपए दस हजार)
- (a) Where the amount of duty and interest demanded and penalty is levied is more than ₹ 50,00,000/- (Rupees Fifty Lakhs), ₹ 10,000/- (Rupees Ten Thousand);
- (ख) जहाँ पर मांगा गया शुल्क ब्याज और दण्ड रूपए 5,00,000/- (रूपए पांच लाख) से अधिक हो लेकिन, रूपए 50,00,000/- (रूपए पचास लाख) से कम हो 5,000/- (रूपए पांच हजार)
- (b) Where the amount of duty and interest demanded and penalty levied is more than ₹ 5,00,000/- (Rupees Five Lakhs) but not exceeding ₹ 50,00,000/- (Rupees Fifty Lakhs), ₹ 5,000/- (Rupees Five Thousand);
- (ग) जहाँ पर मांगा गया शुल्क ब्याज और दण्ड रूपए 5,00,000/- (रूपए पांच लाख) अथवा कम हो, रूपए 1,000/- (रूपए एक हजार)
- (c) Where the amount of duty and interest demanded and penalty levied is ₹ 5,00,000/- (Rupees Five Lakhs) or less, ₹ 1,000/- (Rupees One Thousand);

7. इस आदेश की प्रतिलिपि पर न्यायालय शुल्क मुद्रांक अधिनियम, 1970 की अनुसूची 1 मद 6 के अंतर्गत निर्धारित 50 पैसे का न्यायालय शुल्क मुद्रांक (कोर्ट फी स्टाम्प) लगाया जाना चाहिए।

7. The Copy of this order attached therein should bear a Court fee stamp of 50 paise as prescribed under schedule 1 of Article 6 of the Court fee stamp Act, 1970.

8. उक्त अपील फॉर्म के साथ शुल्क / दण्ड की अदायगी का प्रमाण संलग्न किया जाना चाहिए।

8. Proof of payment of duty, penalty etc. should also be attached in original to the form of appeal.

9. अपील पर रु. 5 (रूपए पांच) का न्यायालय शुल्क मुद्रांक (कोर्ट फी स्टाम्प) लगाया जाना चाहिए।

9. Appeal should bear a Court Fee Stamp ₹ 5/-.

10. पूर्ण जानकारी हेतु केंद्रीय उत्पाद शुल्क (अपील) नियम, 2001 एवम CESTAT (कार्यविधि) नियम 1982 देखें।

10. Please refer to the Central Excise (Appeals) Rules, 2001 and the CESTAT, Procedure Rules, 1982 for complete details.

To,

**M/s. Matangi Rolling Mill
Sihor - Ahmedabad Road,
Village Vadiya, Tal. Sihor,
Distt. - Bhavnagar**

विषय : कारण बताओ नोटिस संख्या :

Subject: Show Cause Notice F.No. (i) AR-II/SH/D-1/Matangi/98 dated 27.10.1998, (ii) AR-II/SH/D-2/Matangi/98 dated 27.11.1998, (iii) AR-II/SH/D-3/Matangi/98 dated 08.04.1999, (iv) AR-II/SH/D-4/Matangi/98 dated 15.06.1999, (v) AR-II/SH/D-5/Matangi/98 dated 12.08.1998, (vi) AR-II/SH/D-7/Matangi/98 dated 21.10.1999, (vii) AR-II/SH/D-8/Matangi/99 dated 24.01.1999 and (viii) AR-II/SH/D-9/Matangi/00 dated 10.04.2000 issued to M/s. Matangi Rolling Mill, Sihor-Ahmedabad Road, Village Vadiya, Tal. Sihor, Distt.-Bhavnagar



BRIEF FACTS OF THE CASE :-

M/s. Matangi Rolling Mill, Sihor (hereinafter referred to as the "Noticee") are manufacturer of M.S. CTD / Round Bars (hot rolled steel products) etc. in their hot rolling mill. They opted to work under the scheme of discharging Central Excise duty based on Annual Capacity of Production (ACP) vide their application dated 03.11.1997 as described in Sub-rule (3) of Rule 96ZP of the Central Excise Rules, 1944 (herein after referred to as the "CER, 1944") read with Section 3A of the Central Excise Act, 1944 (herein after referred to as the "CEA, 1944") (commonly known as Compounded Levy Scheme). The Noticee declared the parameters of their rolling mill as required under the scheme, at the time of applying for discharging the duty liabilities under the above scheme.

2. On the basis of information relating to various parameters of the mill furnished by the Noticee, the Annual Capacity of Production (ACP) of the mill of the Noticee was determined at 919.012 MTs, with effect from 09.11.1997, under Rule 3 of Hot Re-Rolling Steel Mills Annual Capacity Determination Rules, 1997 (HRSMACD Rules, 1997) and communicated vide letter F. No. IV/16-06/MP/98 dated 23.03.1999.

3. Consequent to the change of parameters affected by the Noticee, the Annual Capacity of Production was re-fixed at 1098.110 MTs, with effect from 01.07.1999, under Rule 4 read with Rule 5 of HRSMACD Rules, 1997 and communicated vide letter F. No. IV/16-06/MP/98 dated 24.05.2000.

4. Accordingly, the Noticee was required to pay Central Excise duty (Compounded levy) as per Rule 96ZP(3) of CER, 1944 on the basis of Annual Capacity of Production (ACP) determined. However, the Noticee failed to pay their duty liability. Hence, below mentioned 8 Show Cause Notices were issued under Rule 96ZP(3) of the CER, 1944 demanding duty and the interest thereon and also proposing penal action under Rule 96ZP(3) and Rule 173Q(1) of CER, 1944.

Sr. No.	ACP (in MTs)	SCN No.	SCN Date	C.Ex. duty payable per month (₹)	period	Total duty payable (₹)
1	919.012	AR-II/S4/D-1/Matangi/98	27.10.1998	11488/-	04/1998	11488/-
2	919.012	AR-II/S4/D-2/Matangi/98	27.11.1998	11488/-	05/98 to 10/98	68928/-
3	919.012	AR-II/S4/D-3/Matangi/98	08.04.1999	11488/-	11/98 to 03/99	57440/-
4	919.012	AR-II/S4/D-4/Matangi/98	15.06.1999	11488/-	04/99 to 05/99	22976/-
5	919.012 1098.110	AR-II/S4/D-5/Matangi/98	12.08.1999	11488/- 13726/-	06/99 to 07/99	25214/-
6	1098.110	AR-II/S4/D-7/Matangi/98	27.10.1999	13726/-	08/99 to 09/99	27452/-
7	1098.110	AR-II/S4/D-8/Matangi/98	24.01.2000	13726/-	10/99 to 11/99	27452/-
8	1098.110	AR-II/S4/D-9/Matangi/98	10.04.2000	13726/-	12/99 to 03/2000	54904/-
Total						295854/-



ORDER-IN-ORIGINAL :-

5.1 These Show Cause Notices were taken up for adjudication at the relevant time and personal hearing was granted to the Noticee. The Noticee neither filed replies to the aforesaid Show Cause Notices nor appeared for personal hearing. Accordingly, these 8 Show Cause Notices were adjudicated by the Commissioner, Customs and Central Excise, Rajkot.

5.2 At the time of adjudication of these 8 Show Cause Notices, the Commissioner, Customs & Central Excise, Rajkot vide Para 6.1 of the aforesaid order dated 04.12.2000 observed as under :-

"However, keeping in view the directions of the Hon'ble Supreme Court dated 21.04.1998 referred to above, orders for imposition of penalty or recovery of interest as proposed in the show cause notices are deferred till the final outcome of the Civil Appeals pending before the Hon'ble Supreme Court."

5.3. The adjudicating authority, vide Order-in-Original No. 206 to 213/TECH/COMMR/2000 dated 04.12.2000, confirmed the Central Excise duty demand aggregating to ₹ 2,68,402/- under Rule 96ZP(3) of the CER, 1944 read with Section 11A of the CEA, 1944. However, proceedings pertaining to imposition of penalty and recovery of interest were deferred in view of the directions of Hon'ble Supreme Court contained in Order dated 21.4.1998 in the case of UOI and Others V/s M/s. Supreme Steels and General Mills and Others in CA No. 52-63/98.

ORDER OF HON'BLE CESTAT :-

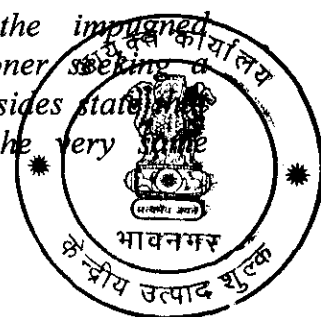
6. Aggrieved by the aforesaid Order-in-Original, the Noticee filed an appeal with the Hon'ble CESTAT. The said appeal of the Noticee was dismissed by Hon'ble CESTAT vide Order No. C-I/1803/WZB/2002 dated 24.06.2002, for failure to comply with Section 35F of the CEA, 1944 .

7.1. The department also filed an application under Section 35E(1) of the CEA, 1944 with the Hon'ble CESTAT against the aforesaid Order-in-Original as it was noticed that the said Order-in-Original was not legally correct and proper to the extent of arriving at the duty demands to be confirmed as per the said order due to certain typographical errors noticed in arriving at the same. The adjudicating authority ought to have worked out the correct duty demands for the aggregate amount of ₹ 2,95,854/- instead of aggregate amount of ₹ 2,68,402/- confirmed (duty demand inadvertently shown as ₹ 27,452/- instead of correct amount of ₹ 54,904/- against show cause notice mentioned at Sr. No. 8).

7.2 The Hon'ble CESTAT passed the following order vide Order No. CB/A/893 to 898/WZB/06 dated 28.06.2006 :-

" Shri A.D. Mani appears for the respondent M/s. Vidyaram Steel Rolling Mills. No one is present on behalf of others respondents.

2. Heard the learned DR as well as the learned Advocate. These appeals have been filed by the Revenue against the impugned orders-in-original passed by the adjudicating Commissioner seeking a rectification in the calculation of the duty. However, both sides state earlier the appeals filed by the respondents against the very same



orders-in-original have been heard and decided by the Tribunal vide Order Nos. C-I/3072-3117/WZB/2001 dated 09.10.2001, CI/2351-53/WZB/2002 dated 10.8.2002 and CII/961/WZB/2002 dated 10.8.2002 and that the very same impugned orders have already been set aside remanding the matters for fresh decision. In view of these remand orders for fresh decision, the learned DR agrees that the department's appeals do not survive and hence, we dismiss these appeals."

WRITTEN SUBMISSION AND PERSONAL HEARING :-

8. In view of the order of the Hon'ble CESTAT, the cases have been taken up for adjudication afresh. Further, issue of imposition of penalty and recovery of interest, which were deferred in the earlier adjudication proceeding, till the final outcome of the Civil Appeals pending before the Hon'ble Supreme Court in view of Hon'ble Supreme Court order dated 21.04.1998, have also been taken up for adjudication.

9. The Noticee was granted opportunities of personal hearing with a request to submit written reply, if any. The Noticee was informed about Personal Hearing fixed on 06.01.2012 vide letter dated 16.12.2011 which appears not to have been delivered to the Noticee as observed from Registered Article Tracking system of Indian Post for Article No. RG074084175IN. The Noticee was again informed about Personal Hearing fixed on 23.01.2012 vide letter dated 09.01.2012 which was returned back undelivered with a remark that "returned as Mill is closed". The letter dated 24.01.2012 intimating date of Personal Hearing fixed on 07.02.2012 was sent to the Noticee by Registered Post as well as through the jurisdictional Range Superintendent. The letter sent by Registered Post was returned back undelivered and the jurisdictional Range Superintendent vide letter F.No. AR-II/SH/Misc/2011-12 dated 03.02.2012 informed that the unit is closed since long and no one is available at the said unit to collect the letter of Personal Hearing. Thereafter, the letter dated 08.02.2012 intimating date of Personal Hearing fixed on 22.02.2012 was sent to the Noticee by Registered Post as well as through the jurisdictional Range Superintendent to serve the intimation letter of personal hearing to the Noticee by following the procedure as per Section 37C of the CEA, 1944. The letter sent by Registered Post was returned back undelivered. The jurisdictional Range Superintendent vide letter F.No. AR-II/SH/Misc/2011-12 dated 17.02.2012 informed that as per the procedure of Section 37C of the CEA, 1944, Panchnama dated 14.02.2012 has been drawn and the letter intimating date of personal hearing has been placed on the Notice Board of the Range Office.

DISCUSSION & FINDINGS :-

10. I have carefully gone through the Show Cause Notices, Order-in-Original dated 04.12.2000 passed during earlier adjudication proceedings, Order No. C-I/1803/WZB/2002 dated 24.06.2002 and Order No. CB/A/893 to 898/WZB/06 dated 28.06.2006 of the Hon'ble CESTAT and other evidences available on record.

11. I observe that the intimation letter of personal hearing has been served to the Noticee in the manner provided under Section 37C of the CEA, 1944 as the unit is closed since long and no one is available at the said unit to collect the letter of personal hearing. The noticee neither submitted any written reply nor appeared for personal hearing to represent their case. I, therefore, proceed further to adjudicate this case on the basis of evidences available on record.



12. The Noticee had opted to discharge their duty liability in terms of sub-rule (3) of Rule 96ZP of CER, 1944. The relevant provisions of sub-rule (3) of Rule 96ZP of CER, 1944 provides as follows :-

"96ZP. Procedure to be followed by the manufacturer of hot re-rolled products.

(1)

(2)

(3) *Notwithstanding anything contained elsewhere in these rules, a manufacturer may, in the beginning of each month from 1st day of September, 1997 to the 31st day of March, 1998 or any other financial year, as the case may be, and latest by the tenth of each month, pay a sum equivalent to one-twelfth of the amount calculated at the rate of Rs. 300/- multiplied by the annual capacity in metric tonnes, as determined under sub-rule (3) of rule 3 of the Hot Re-rolling Mills Annual Capacity Determination Rules, 1997, and the amount so paid shall be deemed to be full and final discharge of his duty liability for the period from the 1st day of September, 1997 to the 31st day of March, 1998, or any other financial year, as the case may be, subject to the condition that the manufacturer shall not avail of the benefit, if any, under the proviso to sub-section (3) or under sub-section (4) of the section 3A of the Central Excise Act, 1944 (1 of 1944) :*

Provided that in respect of the non-alloy steel hot re-rolled products, manufactured or produced by a re-rolling mill in which the nominal centre distance of the pinions in the pinion stand is upto 160 millimetres, the sum payable under this sub-rule shall be calculated as if for the letters and figures "Rs. 300/-", the letters and figures "Rs. 150/-" were substituted. "

Provided further

....."

13. The Annual Capacity of Production of the Noticee was determined at 919.012 MTs with effect from 09.11.1997 under Rule 3 of HRSMACD Rules, 1997. Consequent to the change of parameters affected by the Noticee, the Annual Capacity of Production of the Noticee was re-fixed at 1098.110 MTs with effect from 01.07.1999 under Rule 4 read with Rule 5 of HRSMACD Rules, 1997.

14. The Noticee was therefore required to pay Central Excise duty as provided under Rule 96ZP(3) of CER, 1944 on the basis of Annual Capacity of Production determined as above under provisions of HRSMACD Rules, 1997. The Noticee has not submitted any justifiable reason for non payment of duty by them. I, find that the Noticee was liable to discharge their duty liability on the basis of ACP of 919.012 MTs for the period upto June-1999 and on the basis of ACP of 1098.110 MTs from July-1999 to March-2000. Accordingly, for the period covered by SCNs, the Noticee is liable to discharge Central Excise duty aggregating to ₹ 2,95,854/- as per provisions of Rule 96ZP(3) of CER, 1944.

15.1 In sub-rule (3) of Rule 96ZP of CER, 1944, the following proviso was substituted vide Notification No. 7/98-C.E.(N.T.) dated 10.03.1998 :-

"Provided also that where a manufacturer fails to pay the whole of the amount payable for any month by the 10th day of such month, he shall be liable to, -



- (i) *pay the outstanding amount of duty alongwith interest thereon at the rate of eighteen per cent, per annum, calculated for the period from the 11th day of such month till the date of actual payment of the outstanding amount; and*
- (ii) *a penalty equal to such outstanding amount of duty or five thousand rupees, whichever is greater."*

15.2 I observe that in the earlier adjudication proceedings, the orders for imposition of penalty and recovery of interest were deferred keeping in view the directions contained in Hon'ble Supreme Court's order dated 21-4-1998 in the case of UOI and Others V/s. M/s. Supreme Steels and General Mills and Others, till the final outcome of the Civil Appeals pending before the Hon'ble Supreme Court. I have gone through the said Order dated 21-4-1998 passed in Civil Appeal Nos. 52-63/98 wherein it was inter alia ordered that :-

"While the matters are pending in this Court, the Union Government shall not take any penal or coercive measures under the Notification No. 7/98-Central Excise (NT) dated March 10, 1998."

15.3 I further observe that the said Civil Appeals have been finally disposed off by the Hon'ble Supreme Court on 15.10.2001 [2001 (133) ELT 513 (SC)] without putting any restriction or restraining the Department from imposing penalty and charging interest from the manufacturer in case of failure to pay whole of the duty within stipulated time, as provided under Rules.

15.4 I, therefore proceed to examine the issue of imposition of penalty and recovery of interest, as proposed in the show cause notices, which were deferred in earlier adjudication proceedings in view of Hon'ble Supreme Court's Order dated 21.04.1998.

16.1 I find that the Noticee failed to pay the whole of the amount payable for the months of April-1998 to March-2000 by the 10th day of those months and thereby rendered themselves liable to pay the outstanding amount of duty payable on due date during the period covered in SCNs alongwith interest thereon at the rate of eighteen per cent, per annum, calculated for the period from the 11th day of such month till the date of actual payment of the outstanding amount and a penalty equal to such outstanding amount of duty not paid by due date or five thousand rupees, whichever is greater, as provided under sub-rule (3) of Rule 96ZP of CER, 1944.

16.2 I find that the Hon'ble Supreme Court, in the case of Commissioner of Customs & Central Excise, Coimbatore Versus Kannapiran Steel Re-Rolling Mills [2011 (263) E.L.T. 22 (S.C.)] has decided the issue of penalty under Rule 96ZP(3) of CER, 1944, after referring to the decision in the case of Union of India V/s. Dharamendra Textile Processors [2008 (231) E.L.T. 3 (S.C.)], and held as follows :-

"11. After considering all the concerned aspects, this Court finally held that the plea that Rule 96-ZQ and Rule 96-ZO have a concept of discretion inbuilt cannot be sustained meaning thereby that the said Rules are mandatory and there is no discretion available for reducing the penalty. Provisions of Rule 96-ZP being identical and pari materia with that of Rule 96-ZQ and Rule 96-ZO, the ratio of the aforesaid decision rendered by Three Judges Bench is squarely applicable to the facts and circumstances of the present case....."



16.3 Similarly, Hon'ble CESTAT in the case of Bharat Steel Rolling Mills V/s. Commissioner of Central Excise, Salem [2009 (246) E.L.T. 260 (Tri. - Chennai)], referring to the case of Union of India v/s Dharamendra Textile Processors [2008 (231) E.L.T. 3 (S.C.)], has held as follows :-

"4

.....From the Apex Court's reading of the above expressions appearing in Rule 96ZO of CER, the legislative intention behind the Rule 96ZP of CER is also that the provision did not leave any discretion as regards penalty to the authority. In the circumstances, there is no scope for any doubt that the Commissioner (Appeals) sustained the penalty for default of payment of duty in the four months involved in accordance with law.".

16.4 Following the ratio of decisions rendered in above cases, I find that as per the provisions of sub-rule (3) of Rule 96ZP of CER, 1944, liability to pay interest and penalty arises in case of failure to pay the duty within the stipulated time period by the manufacturer who have opted to discharge duty liability under said sub-rule (3) of Rule 96ZP of CER, 1944 and the quantum of penalty and interest prescribed under Rule 96ZP is mandatory. Therefore, I find that the Noticee is liable to pay interest at the rate of eighteen per cent, per annum, calculated for the period from the 11th day of month till the date of actual payment of the outstanding amount of duty and penalty equal to outstanding amount of duty or five thousand rupees, whichever is greater, as provided under Rule 96ZP(3) of CER, 1944.

17. I also observe that the provisions of Central Excise Rules, 1944 have application in the present case by virtue of provisions of Section 38A of the Central Excise Act, 1944.

18. In view of foregoing, I pass the following order :-

ORDER

- (i) M/s. Matangi Rolling Mill, Sihor are liable to pay Central Excise duty of ₹ 2,95,854/- (Rupees Two Lakh Ninety Five Thousand Eight Hundred Fifty Four Only) for the period from April-1998 to March-2000 under Rule 96ZP(3) of Central Excise Rules, 1944, which should be paid forthwith.
- (ii) M/s. Matangi Rolling Mill, Sihor, is ordered to pay interest calculated at the rate of 18% per annum on the aforesaid amount of Central Excise duty not paid within stipulated period, from the 11th day of respective month till the date of actual payment of duty, in terms of Rule 96ZP(3) of Central Excise Rules, 1944.
- (iii) I impose penalty of ₹ 2,95,854/- (Rupees Two Lakh Ninety Five Thousand Eight Hundred Fifty Four Only) on M/s. Matangi Rolling Mill, Sihor, under Rule 96ZP(3) of Central Excise Rules, 1944.

BY REGD. POST A.D.
F.No.V.72/3-68/D/2000-CX.3

N/ 12/26/12
(N. K. BHUJABAL)
COMMISSIONER

Date : 12/26/2012



To,

M/s. Matangi Rolling Mill
Sihor – Ahmedabad Road,
Village Vadiya, Tal. Sihor,
Distt. - Bhavnagar

Copy submitted to :-

- (1) The Chief Commissioner, Central Excise, Ahmedabad Zone, Ahmedabad.
- (2) The Assistant Commissioner, Central Excise, Division Bhavnagar.
- (3) The Superintendent, Central Excise, AR Sihor-II, Division Bhavnagar.
- ✓(4) Guard file.

