NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Tax Case No. 43 of 2017

Commissioner, Central Excise Customs & Service Tax Raipur Chhattisgarh

---- Appellant

Versus

1. M/s A B S Metals Pvt. Ltd. 129-A, Light Industrial Area, Bhilai, Chhattisgarh
2. Shri Sunil Agrawal, Authorized Person, M/s A B S Metals Pvt. Ltd., 129-A, Light Industrial Area, Bhilai, Chhattisgarh

---- Respondents

For Appellant : Shri Vinay Pandey, Advocate.

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice
Hon'ble Shri P. Sam Koshy, Judge.

Order on Board

Per Thottathil B. Radhakrishnan, Chief Justice

25/04/2017

1. We have heard Learned Counsel for the Appellant/Revenue quite in extensio.

2. The concurrent decisions of the Commissioner (Appeals) and the impugned order of CESTAT, insofar as they relate to the refusal to sustain levy of penalty on the alleged clandestine removal of goods, are founded on appreciation of facts of materials as are available on record. The Tribunal had clearly maintained the distinction between penalty that could be levied on clandestine removal of goods and penalty that could be imposed for non-maintenance of accounts.

3. The mere fact that the assessee had not challenged the penalty for non-maintenance of accounts does not *ipso facto* amounts to an admission as to clandestine removal of goods. Therefore, the Tribunal was justified in holding that the onus of proof regarding clandestine moment is on the Revenue which attempts to impose a penalty. We are therefore of the view that the decision of the

CESTAT affirming the decision of the Commissioner (Appeals) is in accordance with law. No substantial question of law arises for determination in this appeal at the instance of the Revenue.

4. In the result, the appeal is dismissed in limine.

Sd/-	Sd/-
(Thottathil B. Radhakrishnan)	(P. Sam Koshy)
CHIEF JUSTICE	**JUDGE**

Anu