FAX : 0532-2400149

REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

To

Dated: 24/10/2017

Appellant as per address in table below
Respondent as per address in table below

Final Order No. A/71263-71264/2017-SM[BR] dated 11/10/2017

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

Application	Appeal	Name and Address of Appellant
1	E/1328/2007	**RAJ RATAN CACTINGS PVT. LTD.** E-23 & 32, UPSIDC, INDUSTRIAL AREAS, ORAI-285001
2	E/1329/2007	**SHRI SUNIL KHATRI, DIRECTOR** M/S RAJ RATAN CASTINGS PVT. LTD., 7/141-A-3, SWAROOP NAGAR, KANPUR
		Name and Address of Respondent
3		-C.C.E. KANPUR 117/7, Sarvodaya Nagar, Kanpur 208005.
4		-C.C.E. KANPUR 117/7, Sarvodaya Nagar, Kanpur 208005.

Other Appellants and Respondents as per Annexure

Copy To

5 Advocate(s) / Consultant(s):

**BIPIN GARG & CO.
ADVOCATES(ALLD)
102, MAHALAXMI ENCLAVE
(ADJ. INCOME TAX OFFICE),
STANLEY ROAD, CIVIL LINES,
ALLAHABAD (U.P.)-211001**

6 Bar Association, CESTAT, Allahabad

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

8 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp ICICI Bank of Defence Colony New Delhi-3

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

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

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

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

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

14 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

15 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

16 C.D.R. 17 Office Copy 18 Second Folder Copy 19 Guard File

Asstt. Registrar

CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
Old Red Building, 38 MG. Marg, Civil Lines, Allahabad – 211 001

COURT NO. I

Appeal Nos. E/1328-1329/2007

[Arising out of Order-in-Original No. 28/COMM/MP/2006/20132 dt. 26.10.2006 passed by the Commissioner of Central Excise, Kanpur.]

Date of hearing: 14.09.2017
Date of decision: 11.10.2017

For approval and signature:

Hon'ble Mr. Ashok Jindal, Member (Judicial)

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Raj Ratan Cactings Pvt. Ltd. **Appellant(s)**
Sh. Sunil Khatri, Director.

VS

CCE Kanpur. **: Respondent(s)**

===

Appearance:

Sh. Bipin Garg, Advocate, for the Appellant(s)

Sh. Mohd. Altaf, (AC) AR for the Respondent(s)

CORAM:

Hon'ble Mr. Ashok Jindal, Member (Judicial)

FINAL ORDER NO. 71263-71264 /2017

Per : Ashok Jindal

The appellants are in appeal against the impugned order wherein demand of duty has been confirmed along with interest and various penalties have been imposed on both the appellants.

2. The brief facts of the case are that the appellants are engaged in manufacturing of M.S. Ingots. On 14.09.2004, the factory of the appellants were visited and it was found that Sh.

Mewal Das, an employee was present who failed to produced the record and stated that the records are at the office in Kanpur. However, the invoice book was produced. Then, their head office in Kanpur was also searched. As per the statutory records, it was found that the balance of finish goods namely M.S. Ingots was of 1221.025 MT and runner riser as 35.915 MT. Sh. Sunil Khatri was present who stated that Sh. Sourabh Jain who is looking after the factory work has gone to Tehran on 11.09.2014 and will be back by the end of the month. An investigation was done at the factory premises and various sizes of M.S. Ingots namely 52", 55" and 58" were found. The stock taking was done on the basis of 10 PCS of different sizes and after calculating the average basis, it was found that there is shortage of 90.477 of MT Ingots. It was also found that shortage of runner riser was also found 25.730 MT on eye estimation. Sh. Mewal Das could not explain the shortages. In view of the above, it was alleged that the appellants have cleared finish goods clandestinely without payment of duty.

3. The raw material stock was also verified and it was estimated that sponge iron 1MT, Silico Manganese 4.1 MT and Ferro Silicon 2 MT. The quantity of raw material did not match with the stock register as it was a stock of 2284.955 MT sponge iron as on date of searches as per the records, therefore, it was alleged that there was shortage of 2283.955 MT on which the appellant has availed Cenvat Credit. Thereafter, the statement of Sh. Sourabh Jain was also recorded and on the basis of the

statement of Sh. Sourabh Jain and Sh. Mewal Dass and on the basis of panchnama, the case was booked against the appellants alleging that they are engaged in the activity of clandestinely clearance of finish goods as well as they have taken Cenvat Credit on sponge iron which was not found in their factory and to impose the penalty on both the appellants. The matter was adjudicated and the allegations made in the show cause notice were affirmed. Aggrieved from the said order, the appellants are before me.

4. The Ld. Counsel for the appellants submits that no physical verification was conducted and stock verification was done only on eye estimation basis. It was also submitted that in cross-examination, Sh. Mewal Das explained the truth to find out the fact that the stock taking has been done on the eye estimation basis for physical verification. Therefore, impugned order is liable to be set aside on this ground only in the light of the decision of the Hon'ble Apex Court in the case of *Andaman Timber Industries Vs. CCE - 2015 (324) ELT 641 (SC)* and *Basudev Garg Vs. CC – 2013 (294) ELT 353 (Delhi)*. He further submitted that the officer did not physically verified the goods. As out of 10372 PCS only 10 PCS of each size were weight and on average basis, the shortage was alleged. As the shortages of out of 1130.548 MT found to be 90.477 MT which is meager quantity, therefore, there was no shortage of finish goods. Accordingly, no duty is demandable on the allegation of clandestinely clearances of finish goods. It is further submitted that as per the shortage of sponge

Ashok Jindal

iron, the adjudicating authority did not agree with the submission that the stock was lying in other shed which Sh. Mewal Das has explained in his cross-examination and it was also verified on 24.02.2005 and it was found that the stock of sponge iron tallies with the stock entered in the stock register. The removal of the such huge quantity clandestinely requires at least around 200 trucks and no evidence has been produced by the Revenue for clearances of the same, therefore, Cenvat Credit cannot be denied in the light of the following decision:-

1. Vikram Cement Pvt. Ltd. Vs. CCE – 2012 (289) ELT 615 (Tri.).
2. Continental Cement Company Vs. UOI – 2014 (309) ELT 411 (All).
3. Vehalana Steel & Alloys Pvt. Ltd. – 2015 (329) ELT 947 (Tri.).
4. Raj Ratan Industries Ltd. Vs. CCE – 2013 (289) ELT 482 (Tri).
5. Everest Rolling Mills Pvt. Ltd. Vs. CCE – 2013(292) ELT 397 (Tri.)

Therefore, he prayed that the impugned order is to be set aside.

5. On the other hand Ld. AR reiterated the findings in the impugned order.

6. Heard the parties and considered the submissions.

7. I find that the appellants have challenged the method of stock taking done during the course of investigation and accordingly panchnama was drawn. The appellant was also sought that the cross-examination of punch witnesses, which the adjudicating authority has denied. In fact for fair adjudication of the case, and to ascertain how the stock taking was done, the cross examination of the punch witnesses was required.

Moreover, as per the show cause notice as stated by the Ld. Counsel for the appellants that 10 PCS of each size has been weighted and on the basis of that, the average weight has been drawn. This fact is to be ascertained from the panch witnesses whether the stock taking was done physically or on eye estimation basis. In that circumstances, the matter needs examination at the end of the adjudicating authority. Denial of cross-examination of panch witnesses is a gross violation of principle of natural justice.

8. In view of the above observations, I set aside the impugned order and remand the matter back to the adjudicating authority with a direction to first grant the cross-examination of panch witnesses to the appellants and thereafter to adjudicate the matter on its own merits, keeping all issues are open.

9. The appeals are disposed of by way of remand.

(Order pronounced in the court on 11.10.2017)

Sd/-

(Ashok Jindal)

Member(Judicial)

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प्रमाणित प्रति/Certified True Copy

01/11/17

सहायक पंजीकार/Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण/(C.E.S.T.A.T.)
38, एम.जी.मार्ग, इलाहाबाद-211001
38, M. G. MARG,ALLAHABAD-211001