

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH**

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 110 of 2016

[Arising out of Order-in-Appeal No. LUD-EXCUS-000-APP-46-47-15-16 dated 23.06.2015 passed by the Commissioner (Appeals), CE & Cus, Chandigarh-I]

M/s A. K. Industries

146, Golf Links, Hambra Road,
Ludhiana, Punjab 141110

.....Appellant

VERSUS

**Commissioner of Central Excise and
Service Tax, Ludhiana**

GST Bhawan, F Block, Rishi Nagar,
Ludhiana, Punjab 141001

.....Respondent

APPEARANCE:

Mr. Sudeep Singh Bhangoo, Advocate for the Appellant

Mr. Kanish Saini, Authorized Representative for the Respondent

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)

HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 61734/2025

DATE OF HEARING: 08.08.2025

DATE OF DECISION: 02.12.2025

S. S. GARG :

The present appeal is directed against impugned order dated 23.06.2015 passed by the Commissioner (Appeals), whereby the learned Commissioner (Appeals) has accepted the department's appeal and set aside the Order of the Original Authority wherein the

Original Authority had dropped the proceedings initiated vide show cause notice dated 29.03.2006.

2. Briefly stated facts of the present case are that as per the Appellant, they were engaged in manufacture of 'Brass Billets' whereas as per the department, the Appellant were engaged in manufacture of 'Brass Ingots'. During the period from 01.04.2005 to 30.06.2005, the Appellant had claimed the benefit of Notification No. 8/2003-CE dated 01.03.2003 (as amended) in respect of their final products namely so called Brass Billets and had cleared the same without payment of excise duty in terms of the provisions of said notification. The department entertained the view that the Appellant had mis-declared the description of their goods as Brass Billets whereas the product manufactured was Brass Ingots to which exemption under said notification was not available and thus had evaded excise duty to the tune of Rs.15,45,499/- during the period from April 2005 to June 2005. On these allegations, the department, after recording the statement of Sh. R.K. Goyal, partner of Appellant firm and after relying upon the opinion of Head of Metallurgical Engineering Department, Punjab Engineering College, Chandigarh, issued the show cause notice dated 29.03.2006 to the Appellant. The Appellant filed the reply to the show cause notice. After following the due process, the Original Authority vide the Order-in-Original dated 18.01.2012, dropped the demand raised in the show cause notice. Being aggrieved by the said Order-in-Original, the department filed appeal before the Commissioner (Appeals) who, vide the impugned Order-in-Appeal, has accepted the appeal of the

department and set aside the Order-in-Original. Aggrieved by the impugned Order-in-Appeal, the Appellant have filed the present appeal before us.

3. Heard both the parties and perused the material on record.

4. The learned Counsel for the Appellant submits that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts and the law.

4.1 The learned Counsel further submits that the Original Authority has specifically held that the product is described as 'Brass Billets' having weight less than 5 kgs, but the same has wrongly been classified by the department as 'Brass Ingots'. He further submits that the Original Authority has held that the Appellant is eligible to small scale exemption under Notification No. 8/2003-CE dated 01.03.2003 (as amended).

4.2 The learned Counsel further submits that an identical case of **M/s Usha Impex**, who had given the description of product as Brass Ingots, had come before the Adjudicating Authority; in that case, on the plea of the Assessee that the weight of the product is less than 5 kgs and the said product is actually classifiable as Brass Billets, the Adjudicating Authority vide its **Order-in-Original dated 02.08.2004** had allowed the small scale exemption; the said order of the Adjudicating Authority was reviewed and challenged by the department before the Commissioner (Appeals) who rejected the appeal of the department vide its **Order-in-Appeal No. 28.09.2005**; thereafter the department further filed appeal before

the Tribunal and the Tribunal vide its **Final Order No. 163/2010 dated 10.03.2010 [reported as 2010 (256) ELT 292 (Tribunal)]** had also rejected the department's appeal.

4.3 The learned Counsel further submits that the department has built up the entire case on the basis of opinion dated 11.11.2001 of Head of Metallurgical Engineering Department, Punjab Engineering College, Chandigarh (extracted in para 8 of the show cause notice), who opined that the product in question does not come under the category of 'Billet' and it may be termed as 'Ingot'.

4.4 The learned Counsel further submits that the impugned period in the present case is April 2005 to June 2005 whereas the opinion of the Head of Metallurgical Engineering Department was dated 11.11.2001, which cannot be considered as an opinion of the expert during the relevant period.

4.5 He further submits that the identical opinion of the Metallurgical Engineering Department, Punjab Engineering College, Chandigarh has been rejected by the Tribunal in the case of **M/s Usha Impex** (supra).

4.6 He further submits that the department has relied upon the opinion of the Metallurgical Engineering Department, Punjab Engineering College, Chandigarh, but the opportunity of the cross examination of the concerned Professor was not allowed.

4.7 He further submits that in the Appellant's own case, the Commissioner (Appeals), earlier vide **Order-in-Appeal No. 168-**

169/CE/LDM/2007 dated 29.06.2007, had dropped the demand for the period from 01.04.2000 to 05.07.2000.

4.8 He further submits that in order to find out the exact nature of the product, it was mandatory upon the department to have drawn samples relevant to the period involved by visiting factory and the same required to be tested by the Laboratory, but the same had not been done; and further, the department had not brought on record any evidence to substantiate that the weight of the product was more than 5 kgs and same qualifies as Brass Ingots.

5. On the other hand, the learned Authorized Representative for the Revenue reiterates the findings of the impugned order.

6. We have considered the submissions made by both the parties and perused the material on records. We find that the show cause notice issued to the Appellant is mainly relied on the statement of the partner of Appellant firm recorded in the year 2001 and also relied on the opinion of Head of Metallurgical Engineering Department, Punjab Engineering College, Chandigarh opined on 11.11.2001. Further, we find that the period involved in the present case is April 2005 to June 2005 and the allegation of the department is that the product in question manufactured by the Appellant is 'Brass Ingots' and not 'Brass Billets' and therefore the Appellant are not entitled to small scale exemption provided under Notification No. 08/2003-CE dated 01.03.2003. Further, we find that the Original Authority in this case has examined all the steps/facts and has come to the conclusion that the product in question is 'Brass Billets'

because the weight of the product is less than 5 kgs. Whereas, the learned Commissioner (Appeals), by rejecting the order of the Original Authority, has held that the product in question is 'Brass Ingots' without any basis. Further, we find that on identical facts, show cause notice was issued to M/s Usha Impex, which was finally decided by the Tribunal in favour of **M/s Usha Impex** as cited supra; in the said case, the Tribunal has held that the expert opinion, on the basis of which the case was made, cannot be relied upon because the opinion was incomplete and there was no examination of the characteristics of the goods; the said order of the Tribunal has not been challenged by the department so far. Further, we find that in the Appellant's own case for the earlier period i.e. from 01.04.2000 to 05.07.2000, the Commissioner (Appeals) vide **Order-in-Appeal dated 29.06.2007** (supra) has dropped the demand on the identical facts.

7. In view of our discussion above, we are of the considered opinion that the impugned order is not sustainable in law and accordingly, we set aside the same and allow the appeal of the Appellant with consequential relief, if any, as per law.

(Order pronounced in the open court on 02.12.2025)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)