

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Appeal No. E/2999/2004

Date 12/11/2007

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
C.C.E.INDORE
P.B.BO-10 MANIK BAGH PALACE INDORE M.P

C.C.E.INDORE

M/S YASH ROLLING MILL

Appellant
Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No. 557/07-EX. dated 03-10-07 passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944


Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent

M/S YASH ROLLING MILL

25 INDUSTRIAL AREA MANDSAUR M.P

2. Adv. / Consult

NONE

3. S.D.R.

4. ~~J.C.D.R.~~

5. Bar association. CESTAT, New Delhi

6. M/s. Deeparchi Publications, M-93, marg. 43, saket, New

7. M/s Centax Publications (P) Ltd., 1512-E, Bhishm Pitamah

8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301

9. R. Venkatraman Constt. 44-B, S.Suncity, Ghaziabad -

10. Nidheshak publications, I.P.Estate, new Delhi

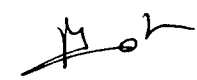
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh,

12. Co, Law Institution

13. TAX INDIA, B-XI/8183, Vasant Kunj, New Delhi - 110070

14. Office Copy

15. Guard file


Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH AT DELHI
APPEAL NO. E/2999/04-

(Arising out of Order-in- Appeal No. 716-CE/IND/APPL-11/03 dtd.15.12.2003
passed by the Commissioner of Central Excise & Customs(A.II), Indore)

For approval and signature:

Hon'ble Jyoti Balasundaram, Vice President

And
Hon'ble K.K.Agarwal, 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? : No
 2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : *Yes*
 3. Whether Their Lordships wish to see the fair copy of the Order? : seen
 4. Whether Order is to be circulated to the Departmental authorities? : Yes
- =====

Commissioner of Cen.Excise, Indore : Appellant

VS

M/s. Yash Rolling Mills

Respondent

Appearance

Shri S.M.Tata, Authorized Representative (DR) for Appellant

None for respondents

CORAM:

Ms. Jyoti Balasundaram, Vice President

And
Mr.K.K.Agarwal, Member(Technical)

Date of decision:3/10/07

Reind ORDER NO.....557/2007EX.....

Per : Jyoti Balasundaram

We have heard Ld.DR and perused the records of the above appeal. None appeared for the respondents inspite of notice.

2. Brief facts of the case are that the respondents (proprietary concern of M/s. Yash Steel Pvt.Ltd.) are engaged in the manufacture of various rolled products of Chapter headings No.26 and 72 of Central Excise Tariff Act, 1985. The proprietary concern is availing benefits of SSI exemption in terms of Notification No.1/93 dtd. 28.2.93 as amended. On scrutiny of R.T.12 returns for the period April '94 to Sept.'94, it was noticed that the clearance value of M/s. Yash Rolling Mills was over Rs. 46 lakhs and clearance value of M/s. Yash Steel Pvt.Ltd. worked out to over Rs. 4 lakhs. Therefore, the aggregate value of clearances of both the units was in excess of Rs. 50 lakhs. Similarly, clearances of the proprietary concern and M/s. Yash Steel Pvt. Ltd. in Sept.'94 exceeded Rs. 50 lakhs limit stipulated in the SSI exemption Notification. On the above basis, the Deptt. issued a show cause notice proposing recovery of differential duty as a result of holding that the benefit of exemption was not available; the demand was confirmed and penalty was imposed by the adjudicating authority; the Commissioner(Appeals) in appeal filed by the proprietary concern, set aside the duty demand and penalty and allowed the appeal of the assessee holding as under:-

“ I have carefully gone through the facts on record and written submissions filed by the appellant in appeal memo and find that the appellant is a proprietary concern do have separate or independent identity and accordingly separate entity, only for accounting purposes they are common. Both the concern although have separate accounts but on close of each financial year accounts of both the concern are amalgamated and a common balance sheet is prepared and audited every year. From the above, it does not mean that their clearance be clubbed unless proved otherwise. I also find that the clearances of both the units have not been correctly taken into account while calculating the aggregate value of clearances as M/s. Yash Steel Pvt.Ltd. sold their product ' ingots' to M/s. Yash Rolling Mills on which Modvat credit is taken by them and further used for the

manufacture of final product and cleared on payment of Central Excise Duty leviable thereon as such clearance of ingots was not to third party but in fact was an internal transfer and value of ingots is very much included in the value of the final products of the appellants, accordingly, there should not be a double value addition for the same commodity i.e. ingots. I agree with the appellants' view that the only correct way to calculate the SSI limits is to sum total the clearances of both the concerns to the third party in open market. The internal clearances of transactions automatically nullifies as sale by one is purchase of the other on final amalgamation. Therefore, it is clear that appellant has correctly paid duty availing of benefit of SSI exemption under Notification No.1/93 dt.28.2.93 as amended. As regards the second point that M/s. Yash Steel (Pvt.)Ltd. has sold this product at lower rate to the appellants has not been proved with any evidence as to how the value quoted is lower, moreover for the same reason a separate offence case has already been registered against them, therefore, this is also set aside."

3. Nowhere does the SCN allege that there were clearances by the proprietary concern to any third party. Therefore, since according to the department both the proprietary concern and the Private Ltd. Co. are one and the same for the reason that the proprietary concern was owned by the Private Ltd Co., the calculation method adopted by the Deptt. by first taking into account the value of raw-materials cleared by the proprietary concern to the private limited company which is not a separate unit according to the department and then the value of the final products cleared by the private limited is erroneous, as correctly held by the Commissioner(Appeals) as seen from para 10 of the impugned order. Therefore, even if the department is correct in its contention that the proprietary concern and the private limited are one and the same, still no duty demand can be sustained against the proprietary concern.

4. Accordingly, we uphold the impugned order and reject the appeal.

K.K.Agarwal
Member(Technical)

Ms. Jyoti Balasundaram
Vice President

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