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

Appeal No. E/3027/2007&E/3030/2007WITHE/S/2710&2714/2007

Date 13/02/2008

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

To :
M/S NEELAM METAL PRODUCTS LTD.
VILL. & POST: MOHAMMADPUR, SEC-36, GURGAON-
122015

M/S NEELAM METAL PRODUCTS LTD.

Appellant


Vs

Respondent

C.C.E. DELHI III

STAY ORDER NO. 139 = 140/08-EX.

I am directed to transmit herewith a certified copy of Final order No. 49-50/08 Excise dated 22-1-08
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944


Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent

C.C.E. DELHI III

UDYOG MINAR, UDYOG VIHAR, VANIJYA NIKUNJ,
PHASE V. GURGAON - 122016 (HARYANA)

2. Adv. / Consult

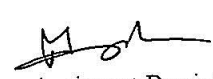
MR.R. SANTHANAM

C-3/210, JANAK PURI, NEW DELHI - 110 058.

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)

**CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST BLOCK-II, R.K. PURAM, PRINCIPAL BENCH, NEW DELHI,
COURT NO. 1**

**Excise Appeal Nos. 3027 & 3030 of 2007 with
Excise Stay Nos. 2710 & 2714 of 2007**

[Arising out of order No. CE/Audit/D-III/Misc./07/3126-3130 dated 7.11.2007
passed by the Commissioner of Central Excise, Delhi].

Date of Hearing/ Decision: 22.01.2008

For approval and signature:

**Hon'ble Mr. Justice S.N. Jha, President
Hon'ble Mr. T.K. Jayaraman, Member (Technical)**

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1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982. :
 2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? :
 3. Whether Their Lordships wish to see the fair copy of the Order? :
 4. Whether Order is to be circulated to the Departmental authorities? :
-

M/s Neel Metal Products Limited

...Appellant
[Rep. by Mr. R. Santhanam, Advocate]

Vs.

CCE, Delhi-III

...Respondent
[Rep. by Mr. S. M. Tata, DR]

Coram: Hon'ble Justice Mr. S.N. Jha, President
Hon'ble Mr. T.K. Jayaraman, Member [Technical]

Final ORDER No. 49-50/08-EX

Per: Justice S.N. Jha :

Stay order No. 139-40/08-EX

These two appeals on behalf of same appellant arising from the two identical orders were taken up together and with the consent of the learned Counsel for the appellant and learned Departmental Representative for the Revenue, heard for final disposal. By the order impugned ⁱⁿ Excise Appeal No.

3027 of 2007, the Commissioner of Central Excise, Delhi has directed special audit in terms of Section 14AA while by the order impugned, ⁱⁿ Excise Appeal No. 3030 of 2007, the Commissioner directed special audit in terms of Section 14A of the said Act.

2. Section 14A of the Act lays down that at any stage of enquiry, investigation or any other proceedings before him, any Central Excise Officer not below the rank of Assistant Commissioner of Central Excise, having regard to the nature and complexity of the case and the interest of revenue, is of the opinion that the value has not been correctly declared or determined by a manufacturer or any person, he may, with the previous approval of the Chief Commissioner of Central Excise, direct such manufacturer or such person to get the accounts of his factory, office etc. as may be specified by the said Officer, audited by a cost accountant, nominated by the Chief Commissioner of Central Excise in this behalf. Section 14AA of the Act provides that if the Commissioner of Central Excise has reason to believe that the credit of duty availed of or utilized under the rules made under the Act by a manufacturer of any excisable goods is not within the normal limits having regard to the nature of the excisable goods produced or manufactured, the type of inputs used and other relevant factors, or that such manufacturer has availed of or utilized credit of duty by reason of fraud, collusion etc., he may direct the manufacturer to get the accounts of his factory, office etc. as may be specified by him, audited by a cost accountant nominated by him.

3. In view of the order we propose to pass it is not necessary to set out the details of the case. The case of the appellant is that the impugned orders were passed without application of mind in a routine manner. According to the learned Counsel, the power under section 14A can be exercised by the competent authority only when it is satisfied having regard to the "nature and complexity of the case" that the value has not been correctly declared or determined by the manufacturer or any person. According to the Counsel, the satisfaction has to be arrived on an

objective consideration and the authority can not pass any order mechanically, borrowing the words of the section. As the order is likely to visit the person with civil consequence, it is imperative that he be given an opportunity of hearing. Such an opportunity would in fact facilitate arriving at the conclusion about the case being complex or not. In support of the contention, reliance was placed a decision of the Supreme Court in the case of Rajesh Kumar and Others vs. Deputy Commissioner of Income Tax and Others, (2006) 287 ITR 91 (SC) rendered in the context of Section 142 (2A) of the Income Tax Act which is *para materia* Section 14A of the Central Excise Act. As regards the order which is subject mater of Excise appeal No. 3027 of 2007, it was submitted that the power under section 14AA can be exercised only when the Commissioner has reason to believe on scrutiny of documents that the availing of or utilization of credit of duty by the manufacturer was not within the normal limits, but in coming to such conclusion the Commissioner again is required to give opportunity of hearing. Such opportunity having not been given, the matter need to be remanded back to the original authority for de novo consideration.

4. On behalf of the Department an attempt was made to distinguish the decision in the case of Rajesh Kumar and Others it was submitted that the scheme of Central Excise Act is different from the Income Tax Act and the decision cannot be applied in the instant case. It was also submitted that the impugned order merely direct special audit by a Chartered Accountant which does not create any liability against the appellant and as no adverse orders has been passed against the appellant, the appeals should be dismissed.

5. After giving our anxious consideration to the contentions raised on behalf of the parties we are of the view that the cases are squarely covered by the decision of the Supreme Court in the case of Rajesh Kumar and Others (supra). While interpreting Section 142A of the Income Tax Act, the Supreme Court observed in clear terms that use of the expression "having regard to" in section 142(2A) is significant. Any opinion in that regard must be formed strictly in terms

of the factors enumerated therein and on objective consideration. The expression of complexity being subjective, perception would vary from person to person and opportunity of hearing in the matter would help the authority in coming to the conclusion whether the case is complex or not.

6. It is the admitted position that opportunity of hearing was not given by the Commissioner in the instant case before passing the impugned order. We, accordingly, set aside the order and remit the matter back to the original authority i.e. Commissioner of Central Excise, Delhi-III for de novo consideration within three months from the date of receipt of the orders. Needless to say that before passing fresh order an opportunity of hearing shall be given to the appellant.

7. Appeals stand allowed.

[Dictated and pronounced in the open Court].

[Justice S.N. Jha]
President

[T.K. Jayaraman]
Member [Technical]

[Pant]