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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/642 /2005-643 /2005 Date 30/04/2008

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

To :
M/S INDIA CASTING COMPANY
BALKESHWAR ROAD, AGRA
282004

M/S INDIA CASTING COMPANY Appellant
Vs
C.C.E. KANPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 167-168/08 **Excise** dated 23-4-08 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. KANPUR
117/7, SARVODAYA NAGAR, KANPUR.
208005
2. Adv. / Consult
MR.A.K.JAIN
"ABHINANDAN FARM" BEHIND CHIRANJIV BHARTI SCHOOL PALAM VIHAR, GURGAON - 122017
GURGAON(HARYANA) 122017
3. C.D.R.
~~4. J.C.D.R.~~
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017
7. M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12. Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai 60017
13. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(Excise Appeal Branch)

1 SH AJAY KUMAR AGARWAL PARTNER M/S INDIA CASTING COMPANY
M/S INDIA CASTING CO., BALKESHWAR ROAD, AGRA
282004

IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, NEW DELHI
COURT NO. II

Excise Appeal No. 642-643 of 2005

(Arising out of Order-in-Original No. 01/Comm./MP/2005 dated 13.1.05 passed by the Commissioner of Central Excise, Kanpur)

For approval and signature

HON'BLE MR. S.S. KANG, VICE PRESIDENT
HON'BLE MR. P. KARTHIKEYAN, 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 would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	no
3.	Whether their Lordships wish to see the fair copy of the order?	yes
4.	Whether order is to be circulated to the Departmental authorities.	N

M/s India Casting Company — Appellant
Shri Ajay Kumar Agarwal, Partner M/s India Casting Co.

Vs.

CCE, Kanpur — Respondent

Appearance:
Shri Rajesh Jain, Advocate - For appellant
Shri A.N. Sharma, Jt. CDR - For respondent

CORAM:
HON'BLE MR. S.S. KANG, VICE PRESIDENT
HON'BLE MR. P. KARTHIKEYAN, MEMBER (TECHNICAL)

Date of Hearing: 6.2.2008
Date of pronouncement: 23.4.08

FINAL Order No. 167-168/08-EX dated............

Per S.S. Kang:

Heard both sides.

2. The present impugned order is passed in pursuance to the remand order passed by the Tribunal.

3. In the present case, show-cause notice was issued to the appellant for demand of Central Excise duty amounting to Rs. 23,41,823/- and for imposition of penalty on the ground that the appellant had not used the inputs received under Chapter X procedure for the specified purpose during the period 1.12.91 to 16.6.93. The contention of the appellant is that they are engaged in the manufacture of diesel engine and centrifugal water pumps. The diesel engine of the capacity of and below 10 HP and centrifugal water pumps were exempted from payment of duty. The appellants were receiving non-duty paid inputs under the provisions of Chapter X of Central Excise Rules for the manufacture of diesel engine and water pumps. The contention is that all the inputs which were received under Chapter X procedure were used in the manufacture of the pumps and diesel engine. The contention of the appellant is that before the adjudicating authority they produced monthly internal audit reports for the period in dispute

showing the details of inputs received in stock and their consumption in manufacture of specified goods. This report also contains details of diesel engine manufactured and cleared. The appellant also produced challans which indicated the model number of diesel engine and pumps. The appellant also produced date wise detailed report relating to sale of various diesel and engine pumps during the period in dispute. The contention is that on the basis of these records, the details of inputs received under Chapter X Procedure were consumed in the production of finished products and there is no discrepancy. The contention is that in spite of the fact that the appellant produced the details of their sale of the diesel engine and pumps no enquiries were conducted from the buyers. The adjudicating authority simply rejected the evidence produced by the appellant on the ground that the same is an afterthought. The details produced regarding receipt of the inputs and the use in the final product and the sale of the final product to various buyers were on the record maintained by the appellant during the course of business. The contention is that as the appellant explained the use of all the inputs which were received without payment of duty in the specified goods, therefore, demand is not sustainable.

4. The contention of the Revenue is that the appellant had not maintain~~ing~~ed proper records regarding the inputs which were received by the appellant without payment of duty, not properly accounted for, and the records were maintained as per convenience. The contention of the Revenue regarding evidence produced by the appellant, is that the same is not verifiable, therefore, the adjudicating authority rightly rejected the same. As the appellant could not explain~~ed~~ the use of the inputs received by them without payment of duty, therefore, the demand is rightly made. The Revenue relied upon the decision of Hon'ble Supreme Court in the case of **CCE Vs. Hari Chand Shri Gopal** reported in 2005 (188) ELT 353 to submit that the procedure required under Chapter X was required to be strictly followed. The contention is that when an assessee seeks exemption under a notification, which prescribes compliance of Chapter X, there is a linkage between levy of duty on one hand and the

accountability of the goods used in the factory where the final product is manufactured. As the appellant failed to show that all the inputs received under Chapter X are used in the manufacture of specified goods hence demand was rightly made.

5. We find that in this case the appellants are receiving inputs without payment of duty under Chapter X procedure of Central Excise Rules for use in the water pumps and diesel engines. The present impugned order is passed in pursuance to the remand order passed by the Tribunal, while remanding the order the Tribunal held as under :-

> We have heard both sides and we have carefully considered the pleas advanced from both sides. We agree with the Ld. Advocate Shri A.K. Jain that the appellants have taken a number of pleas based on documents. They also undertook to produce all the various sale invoices/and bills but the authority never directed the appellant to do so and get them examined. They produced the following evidence before the adjudicating authority :
>
> (a) Details of ball bearings used in the production of centrifugal water pumps/pumps with trolley from 1.12.91 to 16.6.93 which were purchased under Chapter X procedure.

(b) Details of inputs purchased by them under Chapter X procedure and used in the manufacture of I.C. diesel engines during 1.12.91 to 16.6.93.

(c) Charts showing details of items manufactured by them for the month of December 91 to June 93.

(d) Internal audit report for the period Dec.'91 to June'93 containing details of inputs used and the goods manufactured.

(e) Pamphlets showing different models of I.C. diesel engines and technical specifications of the engines manufactured by them.

(f) Manual book of diesel engines.

(g) Pamphlet indicating the technical specifications of the different types of pumps.

But the said authority has not taken into account any of those pleas. We find substantial force in the plea of the appellant that merely because certain types of diesel engines and water pumps were available on 16.8.96 on the day of second visit of the concerned officers, it does not mean that the appellant had not produced other types of diesel engines and water pumps during the relevant period requiring consumption of more inputs than were found in those diesel engines and pumps on 16.8.96. The adjudicating authority was duty bond to consider entire evidence produced by the appellant before it and come to a conclusion after taking that evidence into account. It was a different matter if the evidence was not found worthy of reliance by him. But he should do so only after making proper inquiries and come to

> a definite finding in that regard; otherwise he cannot discard that evidence.
>
> In view of the foregoing, we are of the view that the matter is fit for remand for re-adjudication in the light of the above observations and directions. Consequently, we set aside the impugned order and allow the appeal by remand for re-adjudication. It was further directed that the adjudicating officer (concerned commissioner) should complete the denovo proceedings and issue a fresh order within 3 months from date of receipt of this order, failing which pre-deposit made in pursuance of the stay order of the Tribunal would be refunded to the appellant. Bank guarantee should be discharged."

6. During remand proceedings, the appellant produced the evidence showing date, model of diesel engine and the technical specifications and also submitted the list of components that was used in the manufacture of their final products. In respect of the inputs received without payment of duty, the appellant produced monthly internal audit reports, for the relevant period, showing the details of inputs received in stock and their consumption in the manufacture of specified goods. The appellant also produced by way of Annexure-E details of challans under which the final product was cleared and also date wise details relating to sale of various diesel engines and pump sets during the relevant

period. The appellant also produced statement on the basis of records maintained by them the details of inputs received in Chapter X Procedure and their consumption in the production of finished products showing that all the inputs received under Chapter X Procedure are used in the manufacture of specified goods. This evidence produced by the appellant was not taken into consideration by the adjudicating authority on the ground that the same is an afterthought. We find that as the appellant produced evidence regarding receipt of inputs and the use in the manufacture of goods and also sale of final products i.e. engine and pumps and no investigation was done in this regard by the Revenue. There is no other evidence on record to show that inputs received by the appellant were cleared as such without payment of duty. We find that the Tribunal while remanded the matter to the adjudicating authority examination the details of the inputs used in the manufacture of water pumps and in the diesel engine during the relevant period as such details were produced by the appellant. The evidence produced by the appellant was simply rejected on the ground is an afterthought and without verifying the same, therefore, we find merit in the contention of the appellant that they had produced the evidence explaining the use of inputs received under Chapter X Procedure in the manufacture of specified products. The impugned order is set aside and appeals are allowed.

Pronounced on 23.4.08

(S.S. KANG)
VICE PRESIDENT

(P. KARTHIKEYAN)
MEMBER (TECHNICAL)

RM