

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

Appeal No. E/1411/2006,1824/2006-1828/2006

Date 03/06/2008

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

To :
C.C.E. INDORE & VICE VERSA

MANIK BAGH PALACE, POST BOX NO. 10, INDORE
452001 (M.P.)
C.C.E. INDORE

Appellant

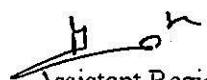
Vs
Respondent

M/S STI SANOI INDIA LTD.

I am directed to transmit herewith a certified copy of Final order No. 293-298/2008

Excise dated 23-5-08

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 STI SANOI INDIA LTD.
STEEL TUBE ROAD,
DEWAS INDORE

2. Adv. / Consult

SH. RAMESH NAIR, ADV.,
"LAKSHMI VIHAR"

AG-192, SCHEME NO. 54, VITAY NAGAR, INDORE (MP)

3. E.D.R.

~~4. I.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 Publications (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-XL/8183, Vasant Kunj, New Delhi - 110070

14. Office Copy

15. Guard file

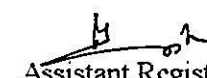
3. SH. A.K. MODI, DIRECTOR

2. M/s. PITHAMPUR TOOLS (P) LTD.

27, INDL. AREA NO. 1, DEWAS (MP)

4. SH. RAJENDRA PRASAD,

5. SH. SUSHIL PANDYA,


Assistant Registrar
(Excise Appeal Branch)

**IN THE CUSTOMS, EXCISE & SERVICE
TAX APPELLATE TRIBUNAL,
WEST BLOCK NO. 2, R.K. PURAM,
NEW DELHI**

COURT – II

EXCISE APPEAL NOS. 1411 & 1824 to 1828 of 2006

[Arising out of Order-in-Original No. 2/COMMR/CEX/IND/06 dated 7.1.2006 passed by the Commissioner, Central Excise & Customs, Indore]

For approval and signature:

Hon'ble Mr. S.S. Kang, Vice President,
Hon'ble Mr. Rakesh Kumar, 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?	Yes
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?	No

M/s. S.T.I. Snoh India Ltd.,
M/s. Pithampur Tools Pvt. Ltd.,
Shri A.K. Modi, Director,
Shri Rajendra Prasad,
Shri Sushil Pandya

Appellants

Vs.

CCE, Indore
& vice versa

Respondents

Appearance:

Shri Ramesh Nair, Advocate for the appellants,
Shri Deepak Garg, SDR for respondent,

Coram:

Hon'ble Mr. S.S. Kang, Vice President,
Hon'ble Mr. Rakesh Kumar, Member (Technical)

Date of Hearing: 14th March, 2008

FINAL ORDER NO. 293-298/08 dated 14/03/08

Per S.S. Kang:

Heard both sides.

2. M/s. STI Sanoh Ltd. (hereinafter referred as STIS) are engaged in the manufacture of Double Valve Copper Braze/Single Valve Copper Coated Steel tubes. During manufacture of steel tubes certain quantity arises which is not up to the desired standard and the same is cleared as defective and rejected goods to M/s. Pithampur Tools Pvt. Ltd. (hereinafter referred as PTPL). Business premises of the appellants were searched and it was found that defective and rejected pipes cleared by STIS to PTPL are being sold at much higher price than the price reflected in the invoices of STIS and the extra amounts received by PTPL were coming back to the manufacturing unit i.e. STIS. Case of the Revenue is that STIS cleared the goods to PTPL by suppressing the value of goods with intent to evade payment of duty. During search of the premises of the appellants, amounts of 3,03,400/- & Rs. 1,42,230/- were seized from the residence of the Director of PTPL and same were taken into possession considering the same as sales proceeds of the goods which are liable for confiscation. Adjudicating authority confirmed the demand of

Rs. 53,88,082/- on STIS and also imposed penalty. No penalty under Section 11AC and 11AB of the Central Excise Act was imposed on the ground that the duty has been paid prior to issuance of the show cause notice and there is no demand of interest under Section 11AB of the Act in the impugned order.

3. Revenue filed appeal seeking imposition of penalty under Section 11AC and interest under Section 11AB of the Central Excise Act.

4. Contention of the appellants is that PTPL were receiving defective pipes which were cleared by STIS on payment of appropriate duty and there is no allegation that both the companies are related person. It is submitted by the appellants that there was an agreement between STIS and PTPL to meet out certain out of pocket expenses and an amount of Rs. 1500/- per M.T. would be paid by PTPL to the manufacturing unit in cash, over and above agreed invoice price. Contention is that revenue had taken into consideration the assessable value of the goods cleared by STIS at the price at which PTPL is selling the goods to their customer. The appellants submitted that documents recovered from the premises of the appellants shows that there was only payment of Rs. 1500/- per M.T. over and above invoice price to STIS by PTPL. Revenue is calculating the demand on the basis of total amount received by PTPL from their customers to assessee's goods at the hands of manufacturing unit. Revenue is relying upon documents recovered from premises of the appellants. The appellants submitted that as per statement of Shri A.K.

Modi, Director of PTPL, accounts were maintained in coded words such as RP for Rajendra Prasad, SP for Sushil Pandya, GB for Ghanshayam Baheti, SD for Sudharshan Deco (P) Ltd., RE in respect of receipts, NKG for Nirmal Kumar Gupta, Ark Jain for Mr. Jain, proprietor of Alfa Hardchrome etc. Statements of account recovered from the appellants show that payment were made to STIS as well to other persons also. Therefore, all the amounts received by PTPL from their customers are not flowing to the manufacturing unit. It is also submitted that reconciliations statement recovered from the appellants' premises shows that there is re-conciliation of accounts in respect of Rs. 1500/- per M.T. which are paid to the manufacturing unit over and above invoice price of the goods. The appellants also submitted that total amount of Rs. 3,36,75,512/- received by PTPL from their buyers on which duty is demanded in the present impugned order, an amount of Rs. 1.05 crore has been paid to Shri Ghanshaym Baheti against purchase of property. It is admitted in the show cause notice that Shri Ghanshayam Baheti has no business relation and transaction either with PTPL or with STIS. In view of this present demand is not sustainable.

5. Contention of revenue is that the statements recorded by the Excise Officers during investigation show that the amounts received by PTPL for sale of the goods to their customers which are higher than the amount on which goods were cleared by the manufacturing unit and the same are flowing back to the manufacturing unit. Therefore, demand is rightly

made. Revenue also submitted that it is a case of suppression of facts with intent to evade payment of duty, therefore, appellants are liable for imposition of penalty under Section 11AC and also liable to pay statutory interest.

6. In this case demand is confirmed after taking into consideration the amounts received by PTPL from their buyers in respect of goods manufactured and cleared by STIS on the ground that STIS is clearing the goods to PTPL by suppressing the real value. Demand was confirmed after taking into consideration the amounts in respect of sale of goods received by PTPL from their customers. We find that during search of premises of the appellants an agreement was found which shows that PTPL will pay Rs. 1500/- per M.T. to the manufacturing unit over and above invoice price. This fact is not in dispute.

7. Further, we find that all the amounts received in cash by PTPL are not flowing back to the manufacturing unit. It is also on record that revenue is demanding duty after taking into consideration total amount of Rs. 3,36,75,512/- the excess cash received by PTPL from their buyers and out of this amount Rs. 1.05 crore has been paid by PTPL to Shri Ghanshayam Baheti for purchase of property and Shri Ghanshayam Baheti has no relation with PTPL or manufacturing company. Reconciliation statement which were also recovered during search shows that there was reconciliation of accounts to the extent of RS. 1500/- per M.T. over and above invoice value at which the goods were cleared by manufacturing unit to PTPL. In these circumstances we hold that Rs. 1500/- per M.T. requires to be added to the assessable value of the goods cleared by manufacturing unit to PTPL. To this extent value of goods

were suppressed. We hold that all cash received by PTPL from their customers were not flowing back to the manufacturing unit. Therefore, confiscation of cash recovered from the residence of the Director of PTPL is not sustainable, hence, set aside.

8. Duty is to be re-quantified in the light of the observations made above, and issue of penalty is to be re-decided after quantification of the demand.

9. In respect of appeal filed by Revenue we find that as there was clear intention to evade payment of duty, and in view of the decision of the Punjab & Haryana High Court in the case of C.C. vs. Omkar Steel Tubes, reported in 2008 (221) ELT 200 wherein the Hon'ble High Court has held that in case duty has been paid prior to issuance of show cause notice and there was suppression of facts with intent to evade payment of duty, penalty under Section 11AC is imposable. The appellants are also liable for statutory interest as per provisions of Section 11AB of the Central Excise Act. As we are remanding the matter to the adjudicating authority for re-quantification of demand, hence, the issue of imposition of penalties under Section 11AC of the Act and interest are also remanded to adjudicating authority. All the appeals are disposed of as indicated above.

(Pronounced on 23.5.08)

(S.S. KANG)
VICE PRESIDENT

(RAKESH KUMAR)
MEMBER (TECHNICAL)

Dated 9th April, 2008

RK