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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/299 /2007-300 /2007 Date 03/06/2008

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

To :
M/S JAI BHAWANI CON-CAST PVT. LTD.
155, SANDESH VIHAR, PITAMPURA, NEW DELHI.
110034

M/S JAI BHAWANI CON-CAST PVT. LTD. Appellant

Vs

C.C.E. JAIPUR I Respondent

I am directed to transmit herewith a certified copy of **Final order** No. 311-312/2008 **Excise** dated 27-5-08

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
   C.C.E. JAIPUR I
   N.C.R.B. 'C' SCHEME, STATUE CIRCLE, JAIPUR.
   302005
2. Adv. / Consult
   MR.K.K ANAND
   A-5,BASEMENT,LAJPAT NAGAR-III NEW DELHI-24
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. RAMAN BHATIA, DIRECTOR
155, SANDESH VIHAR, PITAMPURA, NEW DELHI
110034

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

Excise Appeal No. 299-300 of 2007-Ex.

(Arising out of Order-in-Original No. 71/2006-Commr. dated 3.11.2006 passed by the Commissioner of Central Excise , Jaipur-I)

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?	Ri
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?	
4.	Whether order is to be circulated to the Departmental authorities.	

M/s Jai Bhawani Con-Cast Pvt. Ltd. Appellant

Vs.

CCE, Jaipur-I Respondent

Appearance:
Shri K.K. Anand, Advocate - For appellant
Shri Sanjay Kumar, SDR - For respondent

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

Date of Hearing: 18.3.2008
Date of Pronouncement: 27.5.08

FINAL Order No. 311-312/08-EX dated............

Per S.S. Kang:

Heard both sides.

2. The appellant filed these appeals against the adjudication order passed by the Commissioner of Central Excise whereby demand of Rs.82,67,765/- was confirmed and penalties were imposed. The appellants are engaged in the manufacture of stainless steel and alloy steel ingots. The case of the Revenue is that during the audit, it was found that appellant has shown in the balance sheet for the year 2001-2002 and 2002-2003 income under the head 'other receipts' regarding which appellant failed to produce any evidence. The Revenue raised demand in respect of the income which is shown under the head 'other receipts' in the balance sheet on the ground that these amounts are attributable to the sale of SS ingots and alloy steel ingots manufactured and cleared without payment of duty by the appellant.

3. The contention of the appellant is that apart from manufacturing activity they are also engaged in the trading of goods and are registered with the Revenue authorities regarding their trading activity. The appellant relied upon

the registration certificate in this regard. The contention is that the appellants are engaged in the trading activity and also receiving commission as clearing and forwarding agent from Rathi Steels. The appellant also cleared slag which is non-excisable and the amounts received from the sale of slag are also reflected in the 'other receipts'. The appellant also having a Dharam Kanta and the income from Dharam Kanta is also covered under this heading. The appellants are having two trucks and the income from the freight was also reflected in this heading. This evidence was produced by the appellant but the same was rejected on the ground that the same appears to be manipulated. The contention of the appellant is also that they were providing the service of clearing and forwarding agent regarding which appellants were paying Service Tax and relevant returns were produced before the adjudicating authority along with copy of TR-6 challans regarding payment of Service Tax. The appellants are registered with the Revenue authorities regarding their trading activity at C-54/1 Wazirpur Industrial Area, New Delhi.

Regarding the activity of sale, the appellants were filing regular returns with the Sales Tax authorities and also produced the copies of invoices under which the goods were purchased and sold to different parties and no investigation was conducted from their customers. The contention is that the evidence in respect of sale of slag income from Dharam Kanta was also produced before the adjudicating authority. The contention is also that no investigation was conducted from the workers of appellant regarding excess production or regarding receipt of raw material. The contention is that as the evidence shown that the appellants are having income from other activities and regarding which the evidence was produced by way of producing invoices, assessment order etc., therefore, the demand on the ground that the income from 'other receipts' shown in the balance sheet is in respect of the manufacturing activity is not sustainable.

4. The contention of the Revenue is that the adjudicating authority held that the ledger accounts for the

relevant period produced by the appellant in support of their claims do not appears to be genuine as the appellant failed to produce the evidence in support of all the transactions. The Revenue also submitted that certain entries are cash sales, therefore, no verification can be conducted in respect of these entries. The appellant also failed to disclose the names and addresses of their customers who has paid for weighment at Dharam Kanta. In view of this, the amount shown in the balance sheet under the heading 'other receipts' are nothing but in respect of the sale of SS ingots and alloy steel ingots regarding which no duty has been paid.

5. We find that in this case demand is raised in respect of the amounts mentioned in the balance sheets under the heading 'other receipts' for the year 2001-2002 and 2002-2003. The case of the Revenue is that these incomes are in respect of the sale of the manufacturing product which were cleared without payment of duty. The appellants are registered with the Revenue authorities regarding their

trading activity as per the copy of registration certificate at a different place than the manufacturing unit. In respect of the sale and purchase of traded goods the appellant produced invoices/bills and also copies of produced return filed with the Sales Tax authorities which is not in dispute. The appellants are also providing service of clearing and forwarding agent regarding which appellants were paying Service Tax and produced the copy of returns and are also proof regarding deposit of Service Tax. In respect of trading activity, we find that the copy of invoices under which goods were sold the name of customers is mentioned but no verification was conducted from their customers regarding the receipt of the goods whether the same were manufactured by the appellant or these are in respect of traded goods. The goods were also having two trucks which are used for transporting of goods on hire. We further find that there is no evidence on record to show that appellants received unaccounted raw material which are used in the manufacture of final product which cleared without payment of duty. No investigation was conducted from the employees/workers of the appellant in this regard. In these circumstances, we find that the demand on the basis that the income shown in the balance sheet is under 'other receipts' is in respect of the goods manufactured by the appellant is not sustainable hence set aside. The appeals are allowed.

(Pronounced on 27.5.08)

(S.S. KANG)
VICE PRESIDENT

(RAKESH KUMAR)
MEMBER (TECHNICAL)

RM