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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/2736/2004&2899/04 Date 19/06/2008

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

To :
C.C. LUCKNOW

5TH AND 11TH FLOOR, KENDRIYA BHAWAN,
SECTOR -H, ALIGANH, LUCKNOW 226024.
C.C. LUCKNOW Appellant

Vs

M/S V.V.S.ALLOYS MALWAN FATHEPUR Respondent

I am directed to transmit herewith a certified copy of **Final order** No.340-341/08 **Excise** dated 03-6-08

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

Assistant Registrar

(Excise Appeal Branch)

Copy to :
1. Respondent 2, M/S. SHARDA STEEL INDS. LTD.,

1, M/S V.V.S.ALLOYS MALWAN FATHEPUR

UPSIDC INDUSTRIAL AREA MALWAN

2. Adv. / Consult SH. ATUL GUPTA, CS
B-1/1289-A, VASANT KUNJ,
N. DELHI-70

3. S.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)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Excise Appeal Nos. 2736 & 2899 of 2004

(Arising out of Order-in-Appeal No. 25-CE/APPL/KNP/04 dated 31.01.2004 passed by the Commissioner of Central Excise (Appeals), Kanpur).

DATE OF HEARING : 03.06.2008
DATE OF DECISION : 03.06.2008

FOR APPROVAL AND SIGNATURE :

HON'BLE MR. JUSTICE S.N. JHA, PRESIDENT
HON'BLE MR. M. VEERAIYAN, 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

CCE, Lucknow .... **Appellant**
(Rep. by Sh V.K. Agarwal, DR)

VERSUS

M/s V.V.S. Alloys .... **Respondents**
M/s Sharda Steel Indus. .... (Rep by Sh. Atul Gupta, CS)

CORAM : HON'BLE MR. JUSTICE S.N. JHA, PRESIDENT
HON'BLE MR. M. VEERAIYAN, MEMBER (T)

FINAL ORDER NO. 340-341/08-EX

PER M. VEERAIYAN :

These two appeals by the Department involve a common issue and accordingly are being dealt with by a common order.

2. The relevant facts, in brief, are as follows :

(i) Compounded levy scheme was introduced for iron & steel products falling under Chapter 7214.90 w.e.f. 01.09.1997 and as a result thereof, ~~the goods manufactured by the respondents~~ from 01.09.1997 they are entitled to clear the excisable goods manufactured by them on payment of pre-fixed amount of duty. The quantum of duty payable was not dependent on the exact quantum of goods manufactured and cleared during this period;

(ii) In respect of the goods lying in stock as on 01.09.1997, the duty is required to be paid as they are not covered by the scheme which came into existence from 01.09.1997. In respect of such stock to be cleared, Central Government issued Notification no. 50/97 dated 01.09.1997 prescribing a concessional rate of Rs. 300/- per MT and the said Notification relating to goods manufactured in the pre-compounded levy period came to a close as on 31.03.2000 and from 01.04.2000 duty became payable @ 16%.

(iii) The Department based on RT-12 returns filed by the respondents raised demand for the stock lying as on 01.09.1997. It has gone on the basis that the entire closing stock as on 01.09.1997 continue to lie in the factory premises till April, 2000 and, therefore, such clearances should be subject to 16% rate of duty.

3. When the appeals were heard on earlier occasion, details of production and clearances including opening and closing balance monthwise was called for. Learned DR has produced such work sheet in respect of each of these two respondents.

4. On perusal of the summary of 'production clearance details' relating to respondent, M/s V.V.S. Alloys, we find the opening balance of CTD Bars/Wire Rod 764.765 MT and 191.180 of Scrap/Misroll. Every month there has been varying production with a minimum of 655.570 MTs of CTD Bars/Wire Rod to a maximum of 2100.945 MTs and there have been similar quantum of clearances and the balance as on 01.04.2000 is found to be 808.930 MTs. If the Department's contention is to be accepted, this balance of 808.930 MTs of CTD Bars/Wire Rod includes opening balance of 764.765 MTs which was lying as on 01.09.1997. Similar is the position in respect of Scrap/Misroll.

5. Regarding the other respondent, M/s Sarda Steel Industries Ltd., the opening balance of CTD Bars as on 01.09.1997 was 525.650 MTs, Misrolls 5.405 MTs; the closing balance for the

month of June, 1999 in respect of CTD Bars was found to be 57.605 MTs, the closing balance as on 01.04.2000 of CTD Bars for the month is found to be 565.40 MTs.

6. In other words, in both the cases we find regular production and clearances in substantial quantities. Therefore, the contention of the Department that the stock lying as on 01.04.2000 should be treated as the same stock lying as on 01.09.1997 merely based on the ground that such a claim was made in the RT-12 returns filed by the respondents lacks credibility. The submission on behalf of the respondents is that the entry in the RT-12 returns is erroneous, and that the pre-compounded levy stock has been cleared on payment of appropriate duty prior to 01.04.2000. This contention appears plausible and acceptable. Therefore, we do not find any valid ground to interfere with the findings and reasoning adopted by the Commissioner (Appeals).

7. The appeals by the Department are rejected.

(Dictated and pronounced in the open Court on the 3rd day of June, 2008)

(JUSTICE S.N. JHA)
PRESIDENT

(M. VEERAIYAN)
MEMBER (TECHNICAL)

Golay