TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

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

Appeal No. E/3777/2004 - EX[DB]

Date 18/09/2008

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

To :
R.K. ENGINEERING CORPORATION

R.K. ENGINEERING CORPN. A-51, SECTOR-58,
NOIDA, (U.P.)
R.K. ENGINEERING CORPORATION

Appellant

Vs

Respondent

C.C.E. NOIDA

I am directed to transmit herewith a certified copy of **Final order No.**709/08-EX **EX[BR]** dated 11-8-08

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. NOIDA
THE COMMISSIONER OF CENTRAL EXCISE B-123, SECTOR-5, NOIDA
2. Adv. / Consult
MR.BIPIN GARG
B-1/1289,A-VASANT KUNJ, NEW DELHI
3. S.D.R.
4. Bar association, CESTAT, New Delhi
5. M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017
6. M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
8. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
9. Nidheshak publications, I.P.Estate, new Delhi
10. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
11. Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai 60017
12. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
13. Easy Service Tax Online Dot Com Pvt. Ltd. 407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad - 15
14. Office Copy
15. Guard file

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

Excise Appeal No. 3777 of 2004

(Arising out of Order-in-Appeal No. 135-136/CE/APPL/NOIDA/04 dated 27.4.2004 passed by the Commissioner (Appeals), Customs & Central Excise, Noida)

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?	
2.	Whether it would 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 R.K. Engineering Corporation — Appellant

Vs.

CCE, Noida — Respondent

Appearance:
Shri Bipin Garg, Advocate - For appellant
Shri B.S. Suhag, DR - For respondent

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

Date of Hearing: 14.8.2008

Final Order No. 709/08-EA dated.....

Per S.S. Kang:

The appellant filed this appeal against the order-in-appeal passed by Commissioner (Appeals).

2. The brief facts of the case are that the appellants are engaged in the manufacture of bright drawn/turned/wound steel bars. On 22.2.2002, the officers of Revenue visited the factory premises of the appellant and on verification of stock, it was found that there was shortage of 10898.400 kg. of bright steel drawn bars of different grades. The authorised signatory of the appellant could not explain shortage and paid the duty. The adjudicating authority confirmed the demand and imposed penalty. The Commissioner (Appeals) vide impugned order upheld the demand and reduced the penalty to Rs.30,000/- on the firm and set aside the penalty imposed on the partner of the firm.

3. The contention of the appellant before us is only that there is no shortage of the finished product. There is only accounting error. There is no evidence that the finished goods were cleared without payment of duty. The contention is that shortage is in respect of five varieties of final product which is ranging from 86 Kg. to 255 Kgs. These minor variations in the stock was due to accounting error or weighment errors, therefore, the demand is on the

ground that the same were cleared without payment of duty is not sustainable.

4. The Revenue's contention is that as there was shortage of finished products and the verification was conducted in the presence of authorised signatory, therefore, onus is on the appellant to explain the shortage. In the present case, as there is no explanation in respect of the shortage, therefore, duty is rightly demanded.

5. We find that there is shortage of finished goods at the time of verification and the shortage is admitted by the authorised signatory and duty was paid immediately. Even subsequent to the verification, the appellant could not explain the shortage by producing any evidence to show that there was no shortage and it is only accounting error. In these circumstances, we find no infirmity in the impugned order, the appeal is dismissed.

(Operative part of the order pronounced in open Court)

(S.S. KANG)
VICE PRESIDENT

(RAKESH KUMAR)
MEMBER (TECHNICAL)

RM