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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

Date 20/02/2009

Appeal No. E/5946/2004 - EX[DB]

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

To :
M/S BHAWANI SHANKER CASTINGS LTD.
VILL.RAOWALI,PATHANKOT ROAD,JALANDHAR

M/S BHAWANI SHANKER CASTINGS LTD. Appellant
Vs
C.C.E.JALANDHAR Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 140/2009- **EX[DB]** dated 17-2-09

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.JALANDHAR
   CENTRAL REVENUE BUILDING.SECTOR 17-C,CHANDIGARH
2. Adv. / Consult
   MR.SUDHIR MALHOTRA.
   13-R, HUKAM CHAND COLONY, NEAR D.A.V COLLEGE, JALANDHAR

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 - 3
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
13 Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15 Office Copy
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Assistant Registrar
(Excise Appeal Branch)

Customs, Excise and Service Tax Appellate Tribunal,
New Delhi.
PRINCIPAL BENCH.

Appeal No.5946 of 2004-Excise Branch

[Arising out of Order-in-Appeal No.468/CE/JAL/04 dated 30.09.2004 passed by the Commissioner of Central Excise, Chandigarh)

Date of Hearing/ Decision:17.02.2009

For approval and signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)
Hon'ble Mr. P.K. Das, Member (Judicial)

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1. Whether Press Reporters may be allowed to see CESTAT (Procedure) Rules, 1982.

2. Whether it should 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. Bhawani Shanker Castings Ltd. ...Appellant
(Rep. by Shri Sudhir Malhotra, Advocate)

Vs.

CCE, Jalandhar ...Respondent
[Rep. by Shri S.N. Srivastava, DR]

CORAM: **Hon'ble Mr. M. Veeraiyan, Member (Technical)**
Hon'ble Mr. P.K. Das, Member (Judicial)

FINAL Order No...140/09-EX.../Dated:17.02.2009

Per M. Veeraiyan:

This is an appeal against the order of the Commissioner (Appeals) No.468/CE/Jal/04 dated 30.09.2004, by which the order of the Original Authority demanding duty of Rs.7,42,357/- and imposition of penalty was upheld.

2. Heard both sides.

3. The relevant facts, in brief, are as follows:-

(a) The appellant is a manufacturer of M.S. Ingots. For the period 13.4.2000 to 31.07.2000, the officers found that as per the data of electricity consumption from the Mobile Meter Testing Squad (MMTS) Wing of Punjab State Electricity Board, the appellant has used electricity highly disproportionate to the production of M.S. Ingots accounted by them. Accordingly, the original authority arrived at suppressed quantity of production of 422.794 M.T. of ingots valued at Rs.46,39,734/- and held the same to have been clandestinely removed and accordingly, demanded the duty and imposed penalty. The said order has been upheld by the Commissioner (Appeals).

4. Ld. Advocate submits that the main raw material for the manufacture of M.S. Ingots is scrap and no discrepancy in stock of scrap was noticed; no allegation of excess procurement of scrap was made; no evidence indicating use of excess labour, other raw materials was relied upon; no discrepancy in the stock of finished goods noticed; no evidence of any clandestine removal of the finished goods have been relied upon; being summer period, they were using air-conditioners, air-coolers and other appliances, which consumed lot of electricity. The Department did not provide the meter reading indicating alleged excess use of electricity.

5. Ld. DR reiterates the finding of the Commissioner (Appeals).

6. We have carefully considered the submissions from both sides. There is allegation that electricity consumption is highly disproportionate to the production recorded. We note that no other evidence to substantiate the unaccounted production of steel ingots and clandestine

removal of the same have been relied upon. The statement taken from the Authorised Signatory merely refers to the time required for completion of "a heat", which is reportedly between 2.45 hours to 3 hours. No other investigation on the relevant issues appears to have been taken. In reply to the show cause notice, the appellant has contested the charges and submitted that the production depends upon number of factors namely type of raw materials used, labour employed, break-down in machinery, erratic supply of electricity, etc. The alledged quantum of electricity raises serious doubt in our mind also about the quantum of production recorded. The use of such excess quantity of electricity is being disputed by the appellant and they claimed that no meter reading to substantiate the same has been relied upon. There is no other evidence to indicate suppression of production and clandestine removal. The charge of suppression of production and clandestine removal is a serious one and could not be upheld on a mere alleged use of excess electricity, which has also been contested by the appellant.

7. Under these circumstances, we are unable to sustain the order of the Authorities Below and accordingly, we set aside the same and allow the appeal with consequential relief.

Order dictated & pronounced in open court on 17.2.2009

(M. Veeraiyan)
Member (Technical)

(P.K. Das)
Member (Judicial)

Ckp.