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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/915 /2006 - EX[DB] Date 26/06/2009

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

To :
NEW BHARATI ENGINEERING WORKS,
27A, H - SECTOR, INDL. AREA,
GOVIND PURA, BHOPAL (MP)

NEW BHARATI ENGINEERING Appellant
Vs
C.C.E BHOPAL Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 422/2009- **EX[DB]** dated 22-6-09 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 BHOPAL
   HOSHANGABAD ROAD, 48, ADMINISTRATIVE AREA, AREA HILLS, BHOPAL (M.P.) 462011
2. Adv. / Consult
   SH. BIPIN GARG, ADV,
   B-1/1289-A, VASANT KUNJ
   N. DELHI-70
3. C.D.R
4. ~~J.C.D.R.~~
5. Bar association, CESTAT, New Delhi
6. Director Publications, Customs, Excise. I.P. Estate, New Delhi
7. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8. Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
12. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
13. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
14. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
16. Office Copy
17. Guard file

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-III

Date of hearing/decision: 22.6.09

Central Excise Appeal No.915 of 2006

Arising out of the order in original No.50/Commr/CEX/BPL/2006 dated 2.1.2006 passed by the Commissioner of Central Excise, Bhopal.

M/s New Bharat Engineering Works .... Appellant

Vs.

C.C.E., Bhopal .... Respondent

For Approval and Signature:

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

1	Whether Press Reporter 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 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

Appearance:

Shri Bipin Garg, Advocate for the appellants
Shri B.S. Suhag, Authorized Departmental Representative (DR) for the Revenue

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

Final Oral Order No. 422/09-EX

Per M. Veeraiyan:

This is an appeal against the order of the Commissioner No. 50/Commr/CEX/BPL/2006 dated 2.1.2006.

2. Heard both sides.

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

a) The appellant is a manufacturer of parts of electric motors, and generators, switchgears, transformer, threaded articles and unthreaded articles. The raw materials are MS plates, angles, sheets , square, bars and different items of brass. The appellants during the relevant period (April, 2000 to March, 2005) were supplying the parts only to BHEL. They were manufacturing with their own raw materials and also on job work basis on the raw materials supplied by BHEL. (It is clarified across the Bar that in respect of parts/components to be made out of special quality materials BHEL was supplying the said raw materials).The investigation by the officers revealed that during the year 2000-01 and 2001-02, the scrap generated is minimal and during the period 2002-03 and 2003-04 and 2004-05, the scrap generated has gone up steeply to 67.3%, 47.32% and 95.108% respectively as a percentage of the weight of the finished goods. Therefore, it has been presumed that the wastage level should only upto the level of previous years and whatever excess quantity of wastage shown should be treated as mere receipt of invoices without receiving that much quantity of raw materials and therefore, the credit taken was irregular and the same was to be denied. The percentage of scrap has been determined taking into account the weight of finished products received in numbers by BHEL during the relevant period. It has also been held that the percentage of scrap in respect of job work done on BHEL material is much lower than the percentage of scrap reported during the three years in question. On this ground, the show cause notice was issued and Commissioner has held that credit availed to the tune of Rs.32,98,724/- has been irregularly availed and ordered recovery thereof along with interest. He has imposed equal penalty of Rs.32,98,724/-.

4. Learned Advocate for the appellants submits that there is no evidence for the allegation that they received only invoices without receiving the material mentioned therein. None of the raw materials suppliers (three of them are reportedly at Bhopal) have been contacted. The product manufactured during the years 2000-2002 cannot be presumed to be identical to what have been manufactured in the later years. The presumption of the same wastage percentage for all types of parts manufactured and supplied by the appellants is, on the face of it, totally unjustified. He seeks setting aside the order of the Commissioner.

5. Learned DR defends the order of the Commissioner and reiterates the findings. He submits that no prudent man can accept the view that the wastage has gone from 6 to 8% to as high as 97%. He submits that totally a quantity of 1197.573 MT out of the total quantity of 2210.28 MT of raw materials used is unexplained.

6. We have carefully considered the submissions from both sides. A very serious charge of receipt of only invoices without receipt of raw materials and taking credit based on such invoices have been made. It is not understood as to why the so-called invoices supplier (including three of them reportedly available in Bhopal) could not be contacted. The appellant, admittedly, is manufacturing different parts and components for different machines/equipments like electric motor,generator, switchgear, transformer etc. We are not able to accept the view that for each of the product , the percentage of wastage in the raw materials has to be same. At any rate, there has been no investigation about any inflated wastage shown by them. The allegations in the show cause notice have been made without necessary investigation. Of course, the high percentage of wastage shown by the appellant during the years 2002-03 to 2004-05 throws up doubt but the matter should have been properly investigated. The appellant has also not admitted any procurement of mere invoices or excess wastage. In fact, it was explained that during the relevant period, they have procured the raw materials valued about Rs.5.2 crores and sold the finished goods valued at about Rs.7.5 crores with value addition of 42.32%; that their purchase and sale as per balance sheet show that the value addition over input materials was 44.32% and that they have been maintaining proper records of purchase and sale and made payments to the suppliers and the purchases were genuine transactions at arms' length. As against these claims of the appellant, the Commissioner has gone by presumption about permissible wastage for components at macro level, the presumption that the quantity of raw materials in excess of the presumed percentage have not been received at all but only invoices were received and credit taken illegally. Even if there was any manipulation by the appellants, we find that the department

has failed to adduce any reliable evidence. We do not find any justification to sustain the order of the Commissioner and accordingly, the same is set aside and the appeal is allowed with consequential relief. as per law.

(M. Veeraiyan)
Member (Technical)

(P.K. Das)
Member (Judicial)

scd/