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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/5495/2004 - EX[DB] Date 04/09/2009

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

To :
C.C.E.INDORE M.P
P.B. NO.10 MANIK BAGH PALACE, INDORE M.P
C.C.E.INDORE M.P Appellant
Vs
M/S GRD PROFILE STEELS (P)LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 608/2009-**EX[DB]** dated 13-8-09 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
M/S GRD PROFILE STEELS (P)LTD.
314,BHAGIRATH PURA,INDORE
2. Adv. / Consult
NONE

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
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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
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18. HON'BLE PRESIDENT

Assistant Registrar
(Excise Appeal Branch)

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

Excise Appeal No. 5495 /2004- Ex(BR)

[Arising out of Order-in-Appeal No. 321/IND-II/APPL-II/ 2004 dated 6.8.2004 passed by Commissioner of Central Excise (Appeals II), Indore]

For approval and signature:

Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri 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.	Yes
2	Whether it should 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?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

Commissioner of Central Excise. Indore — Appellants

Vs.

M/s. GRD Profile Steels (P) Ltd. — Respondent

Appearance:

Shri P.K. Singh, DR for the Appellants
None for the Respondent

CORAM:

Hon'ble Mr. Justice R.M.S. Khandeparkar, President
Hon'ble Mr. M. Veeraiyan, Member (Technical)

Date of Hearing /decision: 13.08.2009

Final **ORAL ORDER NO. 608/09 -EX**

Per Justice R.M.S. Khandeparkar (for the Bench):

Heard the learned DR. None present for the respondent.

2. This appeal arises out of order dated 6.8.04 passed by the Commissioner (Appeals), Indore. By the said order, the Commissioner (Appeals) had set aside the order dated 7.9.2000 which was passed under Rule 230 of the Central Excise Rules, 1944.

3. When the matter came up for hearing on 7.7.09, after hearing the learned DR for some time, the Tribunal wanted to know from the appellants the following particulars:

(i) When did the respondent opted for compounded levy scheme in the matter of production, clearance of ingots and billets falling under Chapter 72 of the Schedule to the Central Excise Tariff Act, 1985;

(ii) The date of determination of annual capacity of production in the respondent's factory;

(iii) What is the status of the goods which were detained in terms of order dated 7.9.2000.

4. Learned DR appearing in the matter states that, the office of Departmental Representative had already inquired about the data from the Commissionerate at Indore under letter dated 2.7.09 and again have reminded them last week. There was also telephonic communication with the concerned Commissionerate to get the necessary information. However,

since the matter relates to some years back, the concerned Commissionerate is not in a position to give the necessary details immediately and they require one months time.

5. Question of grant of one month to obtain the said information does not arise. Matter relates to the year 2004 and there is no justification for further delay of disposal of the matter.

6. Upon hearing the learned DR and on perusal of the records, it is revealed that the respondent was informed about the determination of annual capacity of production by the Superintendent under his letter dated 3.6.99 and the provisional duty which was fixed was Rs.6,66,667/- per month. Since the respondent had failed to clear certain dues, under letter dated 6.7.2000 he was asked to deposit amount due along with interest. Under reply dated 28.7.2000, the respondent informed the appellant that the unit had been closed with effect from 22.4.2000 due to dispute with MPEB. However, they would clear the balance amount due to the appellant, moment they were able to commence the production. It is the case of the appellant that they failed to clear the dues till September, 2000 and therefore, under order dated 7.9.2000, Deputy Commissioner ordered detention of the goods of the respondents for recovery of duty and penalty due from them. Being aggrieved, the respondents filed the appeal which came to be dismissed on 19.5.03 on the ground of time bar. The matter was carried to this Tribunal and by order dated 30.12.03, the matter was remanded to the Commissioner

(Appeals) to consider the appeal on merits and this is how the impugned order came to be passed.

7. The impugned order is sought to be challenged on the ground that the provisions of Rule 230 do not provide for any show cause notice and moment there was failure to pay the dues in terms of compounded levy scheme, the authorities are entitled to take appropriate action for recovery of dues.

8. Before we deal with the matter, it is also necessary to record that subsequent to order dated 7.9.2000, the goods in question were actually sought to be detained on 10.10.2000 and further delivered back to the respondents on the very day: "under detention memo and superdnama respectively of the same date". Detention memo discloses that the goods were sought to be detained in exercise of powers under section 110 of the Customs Act, 1962, as is applicable under the provisions of section 12 of the said Act.

9. The impugned order discloses that the commissioner (Appeals) had set aside the order of the detention of the goods. As already stated above, the order of the Commissioner (Appeals) was passed on 6.8.04, the goods in question ceased to be detained goods and the respondents were free to deal with said goods as their own property and in the manner they consider appropriate. It is also pertinent to note that the appellant did not seek any stay of the impugned order nor the records disclose any such stay of the impugned order having been granted to the appellant at any point of time. It

is exactly for that reason specific query was made about the status of the goods as on date when the matter came up for hearing on the last occassion. It is needless to say that in case the goods have already been disposed of, the entire exercise in the appeal would be futile. Even assuming that we set aside the impugned order while agreeing with the appellants and restore the order dated 7.9.2000 in the absence of goods in question, our order would be of no help to the appellants. Even otherwise, if one peruses the impugned order, it merely disclose that the Commissioner (Appeals) had set aside the order of 7.9.2000 essentially because the detention of goods was effected without even affording opportunity to the appellant of being heard in the matter. Indeed when the assessee is to be divested of his property, even though the statutory provisions dealing with the matter do not provide for show cause notice, it cannot be heard to say that such power can be exercised ignoring basic principles of natural justice. In other words, the impugned order merely requires the department to follow the basic principles of natural justice. Rather than wasting time and energy in filing the appeal, had the department taken appropriate action in terms of provisions of law and had followed the principles of natural justice, it would have perhaps today already recovered considerable amount of duty which is due and payable by the assessee. One fails to understand why the department people should act in such an irresponsible manner rather than applying their mind and taking proper action in accordance with the provisions of law.

10. In the facts and circumstances of the case, we do not find any reason to interfere with the findings in the impugned order and therefore, the appeal fails and is dismissed.

(Justice R.M.S. Khandeparkar)
President

(M. Veeraiyan)
Member(Technical)

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