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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/44 -49 /2006,61-64 /2006 - EX[DB]   Date 20/11/2009

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

To :
C.C.E. JAIPUR I
N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME,
JAIPUR 302005.
C.C.E. JAIPUR I

Appellant
Vs
Respondent

M/S QUALITY FORGING PRODUCTS-JAIPUR

I am directed to transmit herewith a certified copy of **Final order No.** 1244-1253/ 2009 EX[DB] dated 18-11-09 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 QUALITY FORGING PRODUCTS-JAIPUR
   F-394-A, ROAD NO. 9F, V.K.I. AREA JAIPUR
2. Adv. / Consult MS: ASMITA NAYAK, ADV., A-5, BASEMENT, LAJPATNAGAR-III N. DELHI-24
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)

18.ANIL INDUSTRIES, JAIPUR
BEHIND LATA CINEMA, JHOTWARA, JAIPUR

P.T.O - 2

19.DEEPAK ENGINEERNG WORKS, JAIPUR
H-I-98(D), RIICO INDUSTRIAL AREA, SANGANER, JAIPUR

20.HINDUSTAN STRUCTURALS, JAIPUR
B-4 (C), ROAD NO. 1, VKI AREA, JAIPUR

21.KHANDELWAL INDUSTRIES, JAIPUR
JHOTWARA INDUSTRIAL AREA, JAIPUR

22.M/S CHOKHANI IRON & STEEL WORKS JAIPUR
118-119, JHOTWARA INDL. AREA, JAIPUR

23.M/S MAN STRUCTURAL LTD.
NEAR LOCO SHED, JAIPUR

24.M/S PARWATI METALS INDUSTRIES, JAIPUR(RAJASTHAN)
G-109,RIICO INDUSTRIAL AREA, SANGANER, JAIPUR

25.VIKAS STEEL INDUSTRIES, JAIPUR.
14,KARTARPURA INDL. AREA, 22 GODAM, JAIPUR.
RAJASTHAN

26.M/S. HAQ ASSOCIATES,
122, ROAD NO. 9,V.K.I. AREA,
JAIPUR

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

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

COURT-III

Date of hearing/decision: 4.11.2009

Central Excise Appeals No.44 , 45,46, 47, 48, 49, 61, 62, 63, 64 of 2006

Arising out of the order in appeal No.390-399(MPM)/CE/JPR-I/2005 dated 19.10.2005 passed by the Commissioner (Appeals I), Central Excise, Jaipur.

For Approval and Signature:

Hon'ble Shri M. Veeraiyan, Member (Technical)
Hon'ble Shri D.N.Panda, 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?	Yes
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

C.C.E., Jaipur I ... Appellant

Vs.

1. M/s Quality Forging Products
2. M/s Man Structrual Ltd.
3. M/s Anil Industries
4. M/s Haq Associated
5. M/s Chokhani Iron and Steel Works
6. M/s Parwati Metal Industries
7. M/s Hindustan Structurals
8. M/s Khandelwal Industries
9. M/s Deepak Engineering Works
10. M/s Vikas Steel Industries

Respondents

Appearance:

Ms. Asmita Nayak, Advocate for the appellants
Shri Sansar Chand, Authorized Departmental Representative (SDR) for the Revenue

Coram: Hon'ble Shri M. Veeraiyan, Member (Technical)
Hon'ble Shri D.N.Panda, Member (Judicial)

FINAL Oral Order No. 1244-1253/09-EX.

Per M. Veeraiyan:

These appeals by the Department arise out of a common order in appeal No.390-399(MPM)/CE/JPR-I/2005 dated 19.10.2005 and relate to 10 different parties. As the issues involved are common, the appeals are disposed of by this common order.

2. Heard both sides.

3. The relevant facts, in brief, are that the Rajasthan State Electricity Board entered into agreement with each of the 10 respondents for fabrication of certain products; they supplied the design and specification; they supplied materials like M.S. angle, channels, plates etc. [list of materials supplied by them have not been exhaustively mentioned in the order of the adjudicating authority and also in the order of the Commissioner (Appeals)]. The respondents have undertaken certain processes like cleaning the materials, cutting to specified lengths, cutting to sizes, making holes, trimming , welding etc. (list of processes undertaken have not been given exhaustively. Further the list of processes undertaken in respect of each of the materials have not been

specifically mentioned in the orders of the lower authorities). Show cause notices were issued alleging that after the various operations undertaken by the respondents , the emerging products were having different names , character and use and that they merit classification under Chapter 73.08 which reads as follows during the relevant period:

> ***"73.08 Structures (excluding prefabricated buildings of Heading No.94.06) and parts of structures (for example, bridges and bridge sections, lock-gates, towers ,lattice masts, roofs, roofing, frame-work, doors and windows and their frames and thresholds for doors, shutters, balustrades, pillars and column) of iron or steel, plates, rods, angles, shapes, sections , tubes and the like, prepared for use in structures , of iron or steel***

7308.10	**-**	***Bridges and bridge-sections***
7308.20	**-**	***Towers and lattice masts***
7308.30	**-**	***Doors, windows and their frames and Thresholds for doors***
7308.40	**-**	***Props ands similar equipment or Scaffolding, shuttering or pit-propping***
7308.90	**-**	***Others"***

It has also been held that the parts fabricated by the respondent are required to conform to the ISI standards. Based on the above, original authority confirmed the demands of varying amounts from the 10 parties and imposed penalties as per details given hereunder:

S.No.	Order -in-Original No.& Date	Amount of duty demanded	Amount of penalty imposed under Section 11AC	Amount of penalty imposed under Rule 173Q	Party's name
1.	58/2004 dated 30.9.2004	2860847	0	1000000	Man Structural Ltd.,
2.	81/2004 dated 10.12.2004	1587763	415559	1172204	Quality Forging Products
3.	63/2004 dated 17.10.2004	1898912	0	1898912	Chokhani Iron & Steel Works
4.	95/2004 dated 18.1.2005	2628702	439552	2189150	Parvati Metal Ind.
5.	71/2005 dated 29.10.04	2930812	545432	2385380	Anil Industries
6.	82/2004 dated 5.1.2004	1144072	0	1144072	Haq. Associates
7.	93/2004 dated 24.12.04	2030028	1036250	993778	Hindustan Structural
8.	72/2004 dated 29.10.2004	2854375	472797	2381578	Khandellwal Industries
9.	64/2004 dated 12.10.2004	696403	0	696403	Deepak Engineering Works
10.	65/2004 dated 12.10.2004	1611023	0	1611023	Vikas Steel Inudustries

On appeal by the parties, Commissioner (Appeals) set aside the orders of the original authority and allowed the appeals of the parties.

4. After hearing both sides and on perusing the records we find that description and nature of material given to each of the respondents has not been specifically listed. The exact processes undertaken on each of the raw materials supplied by the Rajasthan State Electricity Board to the respondents have not been specifically indicated. Names of the final products which emerged after the said processes have also not been indicated. The orders merely mention them as parts of transmission

towers. Apparently, these products, if they are identifiable parts, may have specific names. There is also mention in the order of the original authority that the agreement between Rajasthan Electricity Board and the respondents envisaged that the products were ~~has~~ to conform the specifications of Indian Standard. If that being so, the products may have specified names. Without analysing the raw materials meant for each product, the various processes undertaken on such materials, without disclosing the actual names of the final products the original authority came to the conclusion that the respondents have manufactured products which were different from the raw materials, having different end-uses, different specifications and nomenclatures. Original authority should have taken care to analyse each of the products covered by the agreement in the light of the above parameters and other relevant factors to give his finding. He has chosen to deal with the excisability of several products in a very general way indicating generally the raw materials used and generally processes undertaken and giving final products generic names as parts of tower. Such an approach is not appropriate. The Commissioner (Appeals) also has adopted similar approach while allowing the appeals of the parties.

5. However, the learned SDR seeks for opportunity to consider the issues afresh. Considering the nature of issues involved, and the wider implications we deem it appropriate to accede to the request.

6. To enable the same, we set aside the orders of the Commissioner (Appeals) as well as the orders of the original authority and remand the matter for fresh consideration by original authority in the light of the observations made above and after granting reasonable opportunity of hearing to both sides in accordance with law. Respondents are permitted to file the detailed submissions within 45 days from the date of receipt of this order in support of their claim.

7. We clarify that we have not expressed any opinions on merits of the case. All issues are kept open.

8. Appeals are allowed by way of remand on the above terms.

(M. Veeraiyan)
Member (Technical)

(D.N.Panda)
Member (Judicial)

scd/