

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

Appeal No. E/3631-3633/2005-SM[BR]

Date 10/01/2008

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

To :
M/S VIJAY ISPAT ALLOYS PVT LTD
E/55-56 & 97-103, UPSIDC PHASE II, ORAI
INDUSTRIAL AREA, ORAI, DISTT: JALAUN (U.P.)
M/S VIJAY ISPAT ALLOYS PVT LTD

[2]SHRI S.C. SRIVASTAVA, AUTHORISED SIGNATORY
M/S VIJAY ISPAT ALLOYS PVT. LTD.—
[3] SHRI, ABHISHEK JAISWAL, DIRECTOR
M/S VIJAY ISPAT ALLOYS PVT. LTD. B-55-56, UPSIDC
INDL.AREA. PHASEII,ORAI DISTT-JALAUN[UP] Appellant

Vs
Respondent

THE COMMISSINER OF CENTRAL EXCISE KANPUR

I am directed to transmit herewith a certified copy of Final order No.36-38/2008-SM[BR] dated 10.10.2007
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944


Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent

THE COMMISSINER OF CENTRAL EXCISE KANPUR
117/7, SARVODAYA NAGAR, KANPUR

2. Adv. / Consult

MR.SHEKHAR VYAS
P-13, SECTOR 12, NOIDA-201301

3. S.D.R.

~~4. J.C.D.R.~~

5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, marg. 43, saket, New
7. M/s Centax Publications (P) Ltd., 1512-E, Bhishm Pitamah
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301
9. R.Venkatraman Constt. 44-B, S.Suncity, Ghaziabad -
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh,
12. Co, Law Institution
13. TAX INDIA, B-XI/8183, Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file


Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
PRINCIPAL BENCH, COURT NO.III'

In Appeals Nos.3631-33 of 2005-SM (BR)

(Arising out of common Order-in-Appeal No.283-285/CE/APPL/KNP/2005 dated 8.7.2005 of the Commissioner of Central Excise (Appeals), Raipur).

For approval and signature:

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

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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 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 Department Authorities?
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Yes

- (1) M/s. Vijay Ispat Alloys Pvt. Ltd.
- (2) Shri S.C. Srivastava, Authorised Signatory
- (3) Shri Abhishek Jaiswal, Director

...Appellant

Versus

CCE, Kanpur

.....Respondent

Appearance:

Shri Sekhar Vyas, Advocate for the appellants.
Shri S.L. Meena, DR for the respondent.

Final Order No..... *36-38/08-SM(BR)* /Dated: 10.10.2007

Per P.K. Das:

The relevant facts of the case, in brief, are that the Appellant No.1 is engaged in the manufacture of M.S. Ingots classifiable under sub-heading 7206.90 of the schedule to the Central Excise Tariff Act. On 18.6.03. The Central Excise Officers visited the appellant's factory and verified the stock of finished goods and raw materials. Shortage of raw materials of 60 M.T. of Sponge Iron was ascertained. The appellant company deposited the duty on the shortage of the raw materials. A show cause notice was issued proposing to confirm the amount of duty of Rs.74,295/- as deposited by the appellant on shortage of 60 M.T. of sponge iron vide PLA Entry No.06 dated 5.7.03. It has also been proposed imposition of penalty on the appellants. Vide adjudication order dated 29.6.04, the Asstt. Commissioner of Central Excise, imposed penalty of Rs.20,000/-, Rs.15,000/- and Rs.5,000/- on the Appellants nos.1, 2 and 3 respectively. The Commissioner (Appeals) upheld the adjudication order. Hence, these appeals are filed by the appellants. The appellant No.3 in his statement before the officers categorically stated that the Sponge Iron was being received on actual weight basis and issued for production on an approximate basis. It was due to the accumulation of stock over a period of time had resulted the shortage in the stock of Sponge Iron.

2. The Id. Advocate submits that no stock taking was conducted. The Id. Advocate drew the attention of the Bench to the finding of the adjudicating authority whereby it has been observed that it is not possible to do the actual weighing of the raw materials and, therefore, stock was ascertained by the eye estimation. He further submits that the adjudicating authority did not confirm the deposit made by the appellants. He also submits that there is no shortage and, therefore, imposition of penalty is totally bad. Ld. Advocate challenged the demand of duty in the show cause notice.

3. Ld. Departmental Representative reiterates the findings of the Commissioner (Appeals). He submits that the representative of the appellants accepted the shortage found and also paid the duty immediately after detection. Therefore, the contention of the appellant that the stock taking was conducted on eye estimation is absolutely irrelevant.

4. After hearing both sides and on perusal of the records, I find that the appellants deposited duty on the shortage before issue of show cause notice. The Commissioner (Appeals) observed that the records did not show that the payment was made under protest. So, the submission of the Id. Advocate for the stock taking was conducted on eye estimation is irrelevant. I find that this is a case of shortage of raw material detected during stock verification. There is no evidence of clandestine removal of the alleged shortage of the

raw materials. So, I do not find any reason to impose penalty on the appellants. Accordingly, penalties imposed on the appellants are set aside.

The appeals are allowed with consequential relief.

Order dictated & pronounced in open Court on 10.10.2007.

(P.Ķ. Das)
Member (Judicial)

Ckp.