

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/209 /2006-SM[BR]

Date 23/01/2008

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

To :
M/S JAIN STEEL INDUSTRIES,
G.T.ROAD KHANNA SIDE, MANDI
GOBINDGARH, DISTT.FATEHGARH SAHIB (PB)

M/S JAIN STEEL INDUSTRIES,

C.C.E. CHANDIGARH

Appellant
Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No.113/2008-SM[BR] dated 5.12.2007
passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944


Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent

C.C.E. CHANDIGARH

C.R. BUILDING, PLOT NO. 19, SECTOR 17-C,
CHANDIGARH 160017

2. Adv. / Consult

MR.K.K ANAND

A-5,BASEMENT,LAJPAT NAGAR-III NEW DELHI-24

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, Bhisim 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)

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL**

**West Block No.2, R.K. Puram, New Delhi-110066.
Principal Bench, New Delhi**

COURT NO. III

Excise Appeal No. 209 of 2006 – SM (BR)

[Arising out of the Order-in-Appeal No. 390 & 391/CE/
CHD/2005 dated 28/10/2005 passed by The Commissioner of
Central Excise (Appeals), Chandigarh.]

For approval and signature:

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

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 would 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:

M/s Jain Steel Industries

Appellant

Versus

CCE, Chandigarh

Respondent

Appearance

Shri K.K. Sharma, Advocate - for the appellant.

Shri S. Gautam, Authorized Representative (DR) - for the
Respondent.

CORAM : Hon'ble Shri P.K. Das, Member (Judicial)

DATE OF HEARING : 05/12/2007.

final Order No. 113 (08-SM(BR)) Dated : 05/12/07

Per. P.K. Das :-

The relevant facts of the case in brief are that the appellants are engaged in the manufacture of Iron and Steel Products classifiable under the Chapter 72 of schedule to the Central Excise Tariff Act 1985. On 11th July 2003, the Central Excise officers visited the appellant's factory and verified the stock of finished goods and raw material. There was a shortage of raw materials of 7.055 M.T. was found. Shri Kuldeep Kumar in his statement stated that the shortage was occurred due to the reasons that they have not physically verified the stock over a period of time and it is due to burning loss. It is also noticed that the appellants cleared galvanized DLB Steel structure at nil of duty to M/s DMRC Limited, New Delhi by availing exemption Notification No. 29/03 dated 01/04/03 but they have not reversed the amount of 8% as required under Rule 6 (3) (b) of Cenvat Credit Rules

2002. The Adjudicating Authority confirmed demand of duty of Rs. 1,01,293.00 and imposed penalty of equal amount along with interest and also imposed penalty of Rs. 5,000.00 on Shri Kuldeep Kumar, authorized signatory of the appellant. Commissioner (Appeals) dropped the penalty on Shri Kuldeep Kumar and upheld the adjudication order against the appellant.

2. The learned advocate on behalf of the appellant submits that the shortage was detected during stock verification and there is no evidence of clandestine removal of the inputs. Therefore, demand of duty and penalty are not maintainable. He further submits that the demand of duty of Rs. 85,378.00 for violation of Rule 6 (3) (b) of Cenvat Credit Rules is absolutely time barred as appellant vide his letter dated 11/06/03 informed the clearance of the said goods and the notice was issued on 2nd July 2004 beyond the normal period of limitation. He further submits that in this case goods were supplied for projects funded by International organization and therefore reversal of amount under Rule 6 (3) (b) of Cenvat Credit Rules does not arise. In any event, he submits that there is ^{w/o} intention to evade payment of duty and therefore
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imposition of penalty is under Section 11 (AC) of Central Excise Act, 1944 is not justified.

3. The learned DR reiterates the findings of the Commissioner (Appeals). He submits the shortage of the raw material was admitted by the appellant and therefore demand of duty and penalty are justified. He further submits that there is no dispute the appellant removed exempted goods without reversing the amount under Rule 6 (3) (b) of the Rules and they have not maintained the separate account. So, the demand of the amount of Rs. 85,378.00 and imposition of penalty are correct.

4. After hearing both the sides and on perusal of the record, I find that there is dispute that the shortage of raw material was detected during the stock verification. The appellant explained the reasons for shortage, as they have not physically verified the stock over a period of time. So, the demand of duty of Rs. 15,915.00 is justified. Regarding the demand of amount of Rs. 85,378.00 for violation of Rule 6 (3) (b) of Cenvat Credit Rules, I agree with the findings of the Commissioner (Appeals). It is seen that the appellant did

not reverse the amount of 8% on the clearance of the exempted goods. They have not reversed the credit on the inputs used in the manufacture of exempted finished goods. Therefore, the demand of the amount of 8% on the value of the exempted finished goods is justified. I find that the penalty was imposed under Section 11AC of the Central Excise Act, 1944. In this case, shortage was detected during the stock verification. Further, the appellant cleared the exempted finished goods under the cover of duty paying documents. Thus, there is no suppression of facts with intent to evade payment of duty. So, penalty under Section 11 AC cannot be warranted. I find that the Tribunal in the case of Commissioner of Central Excise, Ludhiana vs. Pee Jay International reported in 2007 (213) E.L.T. 709 (Tri. – Del.) held that ~~imposable~~ penalty is not imposable on the shortage of inputs unless clandestine removal from factory is proved. Hence, imposition of penalty of Rs. 15,915.00 on the shortage of raw materials is set aside. Regarding the imposition of penalty for contravention of Rule 6 (3) (b) of Cenvat Credit Rules, I find that the appellant vide letter 11/06/03, informed the department for the clearance of the said goods. However,

there is contravention of the Rules and therefore penalty is reduced to Rs. 10,000.00 under Rule 13 (1) of Cenvat Credit Rules. Hence, the demand of duty is upheld and the penalty is reduced to Rs. 10,000.00. Appeal is disposed of in the above terms.

(Dictated and pronounced in open court)

(P.K. Das)
Member (Judicial)

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