

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/27 /2006-SM[BR]

Date 23/01/2008

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


To :
CCE,KANPUR
OFFICE OF COMMISSIONER,117/7,SARVODAYA
NAGAR,KANPUR
208005

CCE,KANPUR

M/S JUHI ALLOYS LTD,

Appellant
Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No. 123/2008-SM[BR] dated 19.12.2007
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944


Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent

M/S JUHI ALLOYS LTD,
F-90, UPSIDC, INDUSTRIAL AREA, BHARUA
SUMERPUR, HAMIRPUR.

2. Adv. / Consult

NONE--

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)

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL, R.K. PURAM, W.B. NO.2, PRINCIPAL BENCH
NEW DELHI, COURT NO. III**

Excise Appeal No. 27 of 2006 -SM (BR)

[Arising out of order in appeal No. 286-CE/APPL/Knp./2005 dated 02.08.2005 passed by the Commissioner (Appeals) Customs & Central Excise, Kanpur]

Date of Hearing/ Decision: 19.12.2007

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? : *NA*
 3. Whether Their Lordships wish to see the fair copy of the Order? :
 4. Whether Order is to be circulated to the Departmental authorities? :
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CC &CE, Kanpur

[Rep. by Mr. B.S. Suhag, Authorised Representative (DR) for the appellant]

Appellant
[None]

Vs.

M/s Juhi Alloys Limited

Respondent
[None]

CORAM: Mr. P.K. Das, Member (Judicial)

Final ORDER N. 123/08-SM(BR)

Per P.K. Das:

Heard the learned DR on behalf of the Revenue. None appeared on behalf of the respondent in spite of issue of notice. The relevant facts of

the case in brief, are that the respondents are engaged in the manufacture of M.S. Bars. On 23.12.2000, the Central Excise Officers visited the respondents' factory and found a quantity of 22.938 MT of M.S. Bars excess over the recorded balance and shortage of 26.038 MT of raw materials. The respondent contended that the shortages of materials were used in the finished goods, which was found excess. The adjudicating authority confiscated the excess goods and imposed redemption fine of Rs. 31,000/- and also imposed a penalty of Rs. 11,000/- upon the respondent company. Commissioner (Appeals) set-aside the confiscation of the seized goods and also reduced penalty to Rs. 10,000/-.

2. Learned DR on behalf of the Revenue submits that it is a case of non maintenance of records and goods may be confiscated under Rule 25 of Central Excise Rules, 2002. He further submits that there is no dispute regarding excess finished goods which were not accounted. He relied upon the decision of the Tribunal as under:-

- (i) PNP Castings (P) Ltd., Vs. CCE, Lucknow
2006 (194) ELT 250 (Tri. Del.)
- (ii) CCE, Indore (M.P.) Vs. Magnum Steels Ltd.,
2006 (196) ELT 572 (Tri. Del.)

3. After hearing the learned DR and on perusal of the records, I find force in the submission of the learned DR. The Commissioner (Appeals) observed that the order of the confiscation of goods lying in excess of recorded balance within the factory is too harsh. It has also been observed that there is a breach of Central Excise Rules on the part of the respondent inasmuch as they failed to account excess finished goods and penalty is imposable. I find that the Tribunal in the case of Magnum Steels Limited (supra) held that excess goods found then recorded balance in daily production register; confiscation and redemption fine are justified. So, I

set-aside the order of the Commissioner (Appeals), in so far as set-aside of confiscation of goods and redemption fine. However, it is a case of mere non accountal of the goods and therefore, redemption fine is reduced to Rs. 15,000/- and otherwise appeal is rejected.

(Order dictated and pronounced in the open Court)

(P.K. Das)
Member (Judicial)

[Pant]