

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/676 /2005-SM[BR], E/CO/21/2007-SM

Date 24/01/2008

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

To :
C.C.E. INDORE
MANIK BAGH PALACE, POST BOX NO. 10, INDORE
452001 (M.P.)

C.C.E. INDORE

M/S KAPIL STEEL LTD

Appellant

Vs

Respondent

I am directed to transmit herewith a certified copy of Final order No. 136/2008-SM[BR] dated 26.11.2007
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 KAPIL STEEL LTD

PLOT NO 36-C-2, SECTOR-III, PITHAMPUR

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, 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. 676 of 2005 -SM (BR)

E 16/2107

[Arising out of Order-in-Appeal No.IND-I/668/2003 dated 18.12.2003 dated passed by the Commissioner (Appeals) Customs & Central Excise, Indore].

Date of Hearing/decision: 26.11.2007

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 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 Departmental authorities? | : | |

CCE, Indore

Appellant

Vs.

M/s. Kapil Steel Ltd.

Respondent

Appearance:

Mr. S.L. Meena, Authorised Departmental Representative (DR) for the appellant.
Mr. Hemant Bajaj, Advocate for the respondent

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

Final ORDER No 136/08-SM(BR)

Per P.K. Das:

The Revenue filed this appeal against order in appeal No.IND-I/668/2003 dated 18.12.2003 passed by the Commissioner (Appeals) Central Excise, Indore.

2. The relevant facts of the case in brief are that the respondents are engaged in the manufacture of M.S. angles, CTD bars, channels etc. classifiable under sub heading No. 7216.90 of the schedule to the Central Excise Tariff Act, 1985. On 7.09.2001, the Central Excise Officers visited the factory of the respondents and verified the stocks of finished goods and inputs, detected shortage of finished goods and raw materials. The representative of the respondent admitted the shortage of the goods and agreed to pay the duty on the shortage. They have deposited the duty vide TR-6 challans dated 15.9.2001 and 1.10.2001. A show cause notice dated 13.09.2002 was issued proposing the demand of duty on the shortage and to appropriate the amount as already deposited by them. It has also proposed to impose penalty under Rule 25 of the Central Excise Rules, 2001 read with Section 11AC of the Central Excise Act. The adjudicating authority confirmed the demand of duty and appropriated the amount as already deposited by them. He imposed penalty of equal amount of duty under Rule 25 of Central Excise Rules, 2003 read with Section 11AC of the Central Excise Act, 1944. The Commissioner (Appeals) set-aside the adjudication order. Hence, the Revenue filed this appeal.
3. Learned DR on behalf of the revenue submits that the shortage was detected during the stock verification which was admitted by the respondent and paid the duty. He submits that the respondent failed to explain the shortage and, therefore, it is a case of clandestine removal. He also submits that in reply to show cause notice, the respondent contested the demand of duty as no stock taking was conducted, which is not acceptable, at this stage. He also submits that there is a clandestine removal and therefore, imposition of mandatory penalty is justified.
4. Learned Advocate on behalf of the respondent submits that in the panchnama there is no indication of details of stock verification. He submits that the stock taking was conducted on eye estimation basis, which is not acceptable.

He relied upon the decision of the Tribunal in the case of Geekay Wires Pvt. Ltd., vs. CCE, Hyderabad reported in 2006 (200) ELT 86 (Tri. Bang.). He further submits that there is no evidence of clandestine removal and mandatory penalty cannot be sustainable. He reiterates the finding of the Commissioner (Appeals).

5. After hearing both the sides and on perusal of the record, it is seen that on 7.09.2001, the Central Excise Officers detected the shortage of raw materials and finished goods. The representative of the appellant, Shri Jacob Joseph, Excise Officer admitted the shortage and agreed to pay the duty. They have also deposited the duty on 15.9.2001 and 1.10.2001. No dispute was raised by the respondent at any point of time. After issuance of the show cause notice on 13.9.2002 the respondent contested the payment of duty on the ground that stock verification was conducted on eye estimation basis. I find that the show cause notice was issued after one year from the date of payment of duty. Learned Advocate submits that it is not a payment of duty but it is mere a deposit. I find that the respondent did not dispute the stock taking methods and the deposit of the duty before issuance of the show cause notice. So, at this stage, the submission of the learned Advocate has no force. Therefore, the appropriation of the duty by the adjudicating authority is legal and proper and it is upheld.

6. Regarding imposition of mandatory penalty under Section 11AC of the Central Excise Act, 1944, I find force in the submission of the learned Advocate. Penalty under Section 11AC of the Central Excise Act, 1944 would be imposed in the case of fraud, collusion or willful mis-statement or suppression of facts or contravention of any of the provisions of this Act or of the Rules thereunder with intent to evade payment of duty. In the present case, the shortage was detected during the stock verification. No material is placed by the Revenue to invoke the ingredients of Section 11 AC of the Act of the Central Excise Act, 1944. So, the imposition of penalty under Rule 25 of the Central Excise Act read with Section 11 AC of the Central Excise Act, 1944 as imposed by the adjudicating authority is

set aside. Accordingly, the impugned order is set-aside and the adjudication order insofar as the demand of duty is upheld and the imposition of penalty is set aside. The cross objections are disposed of.

(Dictated and pronounced in the open Court)

Ckp

(P.K. Das)
Member (Judicial)