

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/2862/2005-SM[BR]

Date 24/01/2008

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

To :
BHARAT ALUMINIUM COMPANY LTD.
P.O. BALCO NAGAR, KORBA, CHHATTISGARH
495684

BHARAT ALUMINIUM COMPANY LTD.

Appellant

Vs
Respondent

C.C.E. RAIPUR

I am directed to transmit herewith a certified copy of Final order No. 137/2008-SM[BR] dated 9.1.2008 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. RAIPUR
CENTRAL EXCISE BUILDING, DHAMTARI ROAD,
TIKRAPARA, RAIPUR 492001.
2. Adv. / Consult SHRI. RAVI RAGHVAN, ADV.
B-6/10, SAFDARJUNG ENCLAVE NEW DELHI-110029
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, NEW DELHI
COURT NO.II

E/Appeal No.2862/2005-SM

(Arising out of order in appeal No.39/RPR.I/05 dated 3.6.2005 passed by the
Commissioner (Appeals), Customs & Central Excise, Raipur)

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?

NO.

M/s Bharat Aluminium Company Ltd
(Rep. by Shri Ravi Raghvan, Advocate)

Appellant

Vs

CCE, Raipur

Respondent
(Rep. by Shri S.L. Meena, DR)

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

Date of Hearing: 9.1.2007

Final Order No. 137/08-SM(BR)

Per P.K. Das:

Heard both sides and perused the record.

2. The appellant filed this appeal against the imposition of penalty of

Rs. 50,000/-. The adjudicating authority confirmed the demand of duty of Rs.1,99,079/- which was paid by the appellants before passing of the adjudication order. The Revenue filed appeal before the Commissioner (Appeals) for imposition of penalty. The Commissioner (Appeals) modified the adjudication order and imposed penalty of Rs.50,000/- for contravention of the provisions of Rules.

3. The learned Advocate for the appellants submits that there was dispute of levy of duty on the waste and scrap for the period from 16.12.1997 to 27.12.1998. He submits that the appellants deposited the duty before passing of the adjudication order in order to avoid the legal complication and the adjudicating authority rightly did not impose any penalty. He relied upon the following decisions of the Tribunal:-

Hindalco India Ltd Vs CCE Allahabad
2006 (205) ELT 494

CCE Jaipur Vs Ajmer Food Products Ltd
2005 (192) ELT 570

4. The learned DR reiterates the finding of the Commissioner (Appeals). He submits that the appellants cleared the waste and scrap generated out of the capital goods on which they have availed modvat credit and therefore, they are liable to pay the duty. He further submits that the appellants suppressed the fact of removal of goods with intent to evade payment of duty and the Commissioner (Appeals) rightly imposed penalty.

5. After hearing both the sides and on perusal of record, I find that the appellant had contested ^{the demand} before the adjudicating authority on the waste and scrap generated out of bought out goods on which no modvat credit had been

taken. However, they paid the duty after receipt of the show cause notice.

The finding of the adjudicating authority is as under:-

“Since the party has already voluntarily debited an amount of Rs. 1,99,079/-, it is very much the admission on their part that duty discharge on the impugned goods has already been fulfilled. As such, I do not find any substance in going deeper into the merits of the case where duty liability has already been admitted by the party and subsequently paid up by them.”

6. It is seen that the Tribunal in the Ajmer Food Products Ltd (supra) held that the assessee had not disputed that they had paid modvat credit on capital goods which has been sold as capital scrap and since the issue involved is one of the interpretation of rules, penalty is not imposable. In the present case, I find at the outset, the demand of duty^v_h on the ground that scrap generated out of very old bought out items, on which modvat credit was not availed by them. However, appellant paid the duty in order to avoid the legal complicity. In the impugned order, the Commissioner (Appeals) had not disputed this finding. In other words, the Commissioner (Appeals) imposed penalty for contravention of provisions of the Rules. In view of the decision of the Tribunal in the case of Ajmer Food Products (supra), I do not find any reason to impose penalty on the appellant. Accordingly the order of the Commissioner (Appeals) is set aside and the order of the adjudicating authority is upheld. The appeal is allowed.

(Order dictated and pronounced in the open Court).

MPS*

(P.K. Das)
Member(Judicial)