

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/985 – 986 /2006-SM [BR]

Date 06/02/2008

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

To :
1. M/S JAIN MEETAL COMPONENTS P LTD.
2. SHRI. NARENDER KUMAR JAIN
16-B-II,HEAVY INDL AREA,JODHPUR
M/S JAIN MEETAL COMPONENTS P LTD.

Appellant
Vs
Respondent

CCE,JAIPUR

I am directed to transmit herewith a certified copy of Final order No. 262- 263 /2008-SM[BR] dated 8.1.2008 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944


Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
CCE,JAIPUR
NCE BUILDING,C SCHEME,STATUE CIRCLE JAIPUR
2. Adv. / Consult
MR.V. LAXMIKUMARAN
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)

**IN THE CUSTOMS, EXCISE & SERVICE
TAX APPELLATE TRIBUNAL,
WEST BLOCK NO. 2, R.K. PURAM,
NEW DELHI**

PRINCIPAL BENCH, NEW DELHI

Excise appeal No. 985-986 of 2006

[Arising out of Order-in-Appeal No. 94-95(HKS)CE/JPR-II/2006 dated 27.1.2006 passed by the Commissioner (Appeals), Central Excise, Jaipur]

For approval and signature:

Hon'ble Mr. S.S. Kang, Vice President

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 Departmental authorities?	

M/s. Jain Metal Components (P) Ltd.,
Shri Narender Kumar Jain

Appellants

Vs.

CCE, Jaipur

Respondent

Appearance:

Shri Ravi Raghavan, Advocate for the appellants,
Ms. Archana P. Tiwari, Jt.CDR for the Revenue.

Coram:

Hon'ble Mr. S.S. Kang, Vice President

Date of Hearing: 8.1.2008

FINAL ORDER NO. 262-63/02-SM(BR) dated 8-1-08

Per S.S. Kang:

Heard both sides.

2. The appellants filed these appeals against a common impugned order. In this case demand is confirmed after denying credit in respect of inputs used in the manufacture of goods on which no duty has been paid.

3. Brief facts of the case are that the appellants are engaged in the manufacture of Brass & Copper components and Hypodermic Needles. Hypodermic Needles are exempted from payment of duty whereas other items are liable to central excise duty. Some of the inputs are common which are used in the manufacture of both the items. The appellants availing credit in respect of duty paid common inputs which are used in the manufacture of exempted as well as dutiable goods. The appellants are clearing the exempted goods by paying 8% of sale price as per the provision of Rule 57CC, 57A(2) and Rule 6 of Cenvat Credit Rules. Two show cause notices were issued for denial of credit in respect of common inputs on the ground that during this period the appellants have not manufactured and cleared any goods on which duty has been paid and the appellants are only manufacturing exempted goods during this period. hence appellants are not entitled to take credit.

S.S.K.

4. The adjudicating authority confirmed the demand and also imposed the penalty. The Commissioner (Appeals) dismissed their appeal.

5. The contention of the appellants is that a show cause notice was issued on 1.11.2002 demanding duty for the period October, 2001 to February, 2002. Thereafter, another show cause notice was issued on 31.12.2003 demanding duty for the period March, 2000 to September, 2001 alleging suppression of the facts. The contention is that the demand for the period March, 2000 to September, 2001 is time barred as no suppression can be alleged against the appellants. There is also contention that as on 1.11.2002 first show cause notice issued for demand of duty on the same ground. The appellants relied upon the decision of the Hon'ble Supreme Court in the case of Nizam Sugar Factory vs. CCE, reported in 2006 (197) ELT 465 (SC). The contention is that as all the relevant facts were in the knowledge of the department while issuing first show cause notice, the allegation of suppression in the second show cause notice is not sustainable.

6. On merit, contention of the appellants is that the appellants were registered with the revenue authorities for manufacture of goods which require to be cleared on payment of duty, and therefore, as per the provision of Central Excise Rules they are entitled to take credit

on common inputs, and they were required to clear the goods on payment of 8% of sale price of the goods.

7. The contention of the Revenue is that during March, 2000 to February, 2002 the appellants had not manufactured and cleared any goods on which duty has been paid. They are only manufacturing exempted goods. Therefore, during the financial year, 2000-01 and 2001-02 the appellants are not entitled for credit in respect of duty paid inputs as the goods manufactured out of these inputs are cleared without payment of duty.

8. On merit, I find that as the appellants during the period March, 2000 to February, 2002 manufactured and cleared only exempted goods. Therefore, they are not entitled for credit under Central Excise Rules as well as Cenvat Credit Rules.

9. On the issue on time bar, I find merit in the contention that the demand for the period March 2000 to September, 2001 was raised alleging suppression against the appellants issuing show cause notice on 31.12.2003. Another show cause notice was issued on 1.11.2002 demand duty from October, 2001 to February, 2002 on the same ground. Hon'ble Supreme Court in the case of Nizam Sugar Factory has held that when the first show cause notice was issued all the relevant facts were in the knowledge of the authorities. Later on while issuing the second and third show cause notice the same/similar facts should not be taken as suppression of fact on the part of the assessee. As these facts are already in the knowledge of the authorities larger period cannot be invoked. In view of the above

decision of the Hon'ble Supreme Court demand for the period March, 2000 to September, 2001 is set aside as time barred.

10. In respect of imposition of penalty on the firm I find that as the appellants were aware of the provisions of Central Excise Rules and Cenvat Credit Rules, and they have wrongly availed credit in spite of the fact that the goods were cleared without payment of duty the penalty on the appellants is justified. However, taking into account the facts and circumstances of the case and as some portion of the demand is time barred the penalty is reduced to Rs. 1 lakh. In respect of individual penalty on Shri Narender Kumar Jain, Director, I find that in his first statement he specifically mentioned that they are manufacturing goods on which duty is being paid but when he was confronted with the factual position that during this period the appellants had not cleared any goods on payment of duty he retracted from his first statement and admitted the fact. In these circumstances he is also liable for penalty. However, in the facts and circumstances of the case, penalty is reduced to Rs. 25,000/-.

Both the appeals are disposed of in above terms.

(S.S. KANG)
VICE PRESIDENT

Dated 9th January, 2008

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