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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/3496/2006-SM[BR]

Date 26/03/2008

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

To :
M/S SHAHDARA STEEL ROLLING MILLS
520/4, G.T.ROAD, SHAHDARA, DELHI.

M/S SHAHDARA STEEL ROLLING MILLS — Appellant

Vs

C.C.E. JAIPUR II — Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 470 /2008-SM[BR] dated 11.3.2008 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. JAIPUR II
   N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME,
   JAIPUR 302005.
2. Adv. / Consult
   MR.NAVEEN MULLICK
   B-388, MERA BAGH, NEW DELHI-63.
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 Publictions (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 – 110 066.
Principal Bench, New Delhi

COURT NO. I
Excise Appeal No. 3496 of 2006

[Arising out of the Order-in-Appeal No. 41/CE/DLH/2006 dated 31/07/2006 passed by The Commissioner (Appeals) of Central Excise, New Delhi.]

For Approval and signature :
Hon'ble Mr. Justice S.N. Jha, President

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	:	No
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:	~~No~~ Yes
3.	Whether their Lordships wish to see the fair copy of the order?	:	Seen
4.	Whether order is to be circulated to the Department Authorities?	:	No

M/s. Shahdara Steel Rolling Mills — Appellant

Versus

CCE, Delhi — Respondent

Appearance

S/Shri Naveen Mallick and V.K. Gupta, Advocates – for the appellant.

Shri Sumit Kumar, Authorized Representative (DR)– for the Respondent.

CORAM : **Hon'ble Mr. Justice S.N. Jha, President**

DATE OF HEARING : 11/03/2008.

Final Order No. 470/08-SM(BR) Dated : 11. 3.2008

Per. Justice S.N. Jha :-

This appeal by the assessee is directed against the order-in-appeal dated 31/07/06 upholding the order-in-original of the Assistant Commissioner dated 04/01/05 confiscating 3,100 Kgs. of copper wire rods valued at Rs. 3,10,000/- giving the appellant option to redeem the same on payment of redemption fine of Rs. 1,00,000/-, confirming demand of central excise duty amounting to Rs. 49,600/- and, also, imposing penalty of equal amount under Section 11 AC of Central Excise Act, 1944 read with rule 173 Q of Central Excise Rules 1944, with interest at the appropriate rate. The tempo which was carrying the goods in question was also confiscated with option to redeem the same on payment of redemption fine of Rs. 10,000/-.

2. Facts of the case, briefly, are that in the intervening might of 5/6 February 2001, a tempo bearing registration No. DL 1 LD 0022 ~~is~~ carrying copper wire rods was intercepted at M.K. Dharam Kanta, Wazirpur Industrial Area, Delhi. The driver of the tempo who also claimed to be its owner namely Chander Pal produced an invoice, No. 54 dated 05/2/01, of M/s Shahdara Steel Rolling Mills, Shahdara, Delhi i.e. appellant herein. The invoice mentioned the registration particulars of the vehicle (which was supposed to carry the goods) as DL-1LA 0477, the weight of the goods i.e. copper wire rod exceeding 6 mm as 2,505.100 kgs. and name of the consignee as M/s Gosain Wire Industries, A-91, Group Industrial Area, Wazirpur, Delhi. The time of removal (of the goods) however was not mentioned in the invoice. Chander Pal also produced a computerized weighment slip, No. 1816 dated 06/2/01, of M.K. Dharamkanta, New Delhi showing gross weight of loaded tempo as 6040 kgs. Statement of Chander Pal was recorded on the spot who interalia stated that he was taking copper wire rods from M/s Shahdara Steel Rolling to Wazirpur Industrial Area and when he reached M.K. Dharam Kanta and placed the vehicle for weighment,

the officials of the Central Excise Department stopped him and asked for papers concerning with goods kept in the vehicle. He stated that he loaded the consignment at around 1:30 hrs. from Shahdara. The loading was got done and the invoice was given by Shri Khan, the Supervisor of M/s Shahdara Steel Rolling. No other paper was handed over to him. He also disclosed the weight of the empty tempo to be 2940 kgs. The gross weight of the vehicle as per weighment slip being 6040 kgs., the weight of the goods i.e. copper wire rods was found to be 3100 kgs. after deducting the weight of the tempo. Recording these facts and the satisfaction that the goods were liable to be confiscated, the same was seized along with the tempo under Panchnama on the spot on 06/2/01.

3. The statement of Om Prakash Gosain, Proprietor of M/s Gosain Wire Industries was recorded in the same morning at 8 a.m. He stated that he had not received any supply of copper wire rods against invoice No. 54 dated 05/2/01. On scrutiny of the records of M/s Gosain Wire Industries and physical verification of the finished goods the inputs tallied with the

last recorded balance. Later, the statement of Rakesh Kumar, Proprietor of M/s Shah Steel Rolling Mills was also recorded on 09/2/01. He stated that the Accountant prepared the invoice at 1020 hrs. on 05/2/01 for dispatching the goods by tempo no. DL 1 LA 0477 but on account of mechanical fault, the tempo did not turn up till 0630 P.M. On the persuasion of M/s Gosain Wire Corporation, the goods were despatched by tempo at 1200 hrs on the basis of the same invoice No. 54 dated 05/2/01.

4. Show cause notice was issued against confiscation of the seized copper wire rods and the tempo, and levy of excise duty of Rs. 49,600/- as well as the imposition of penalty and interest. The Adjudicating Authority confirmed the demand as aforesaid, he also confiscated the goods as well as the tempo with option to redeem on payment of redemption fine. The appeal before the Commissioner (Appeals) having been dismissed, the appellant has come up to this Tribunal in the present appeal.

5. Shri V.K. Gupta, Advocate appearing for the appellant submitted that there is no evidence regarding movement of

goods through tempo no. DL 1 LA 0477 as reflected in the invoice and the authorities were not justified in holding that it was case of clandestine removal of goods. It was submitted that the appellant has already paid duty on 2505.100 kgs. of copper wire rods and therefore, at best, the appellant could be asked to pay duty on the balance quantity i.e. 595 kgs. on which the duty would come to Rs. 9,520/- and the demand of Rs. 49600/- on the total quantity of 3100 kgs. of copper wire rods was not justified. He also submitted that in any case, the adjudicating authority was further not justified in imposing redemption fine of Rs. 1,00,000/- on total value of goods as found by the Department i.e. Rs. 3,10,000/.

6. On behalf of the Revenue it was submitted that the statement of the driver was recorded on the spot. In his statement he disclosed the name of the appellant the premises from where the goods had been loaded, and the manner. He also happened to be owner of the vehicle and he was supposed to know the laden weight of the vehicle and therefore discrimination of the weight of the goods after deducting the laden weight of the tempo as declared by him

cannot be said to be arbitrary. It was submitted that it is the usual practice that the goods are weighed along with the vehicle. It was pointed out that the movement of goods was clearly clandestine the invoice did not tally with the registration particulars of the vehicle or with the quantity found. As a matter of fact, there was no supporting paper in respect of the movement or removal of 3100 kgs. of copper wire rods. The statements of the driver and the alleged consignee were recorded immediately after the seizure. The removal of goods was in the dead of night. The circumstances of the case strongly suggest clandestine removal of goods and therefore the impugned orders do not warrant any interference.

7. The submissions on behalf of Revenue are well founded. I do not find any substance in the submission of the appellant's counsel that the duty has been already paid on 2505.100 Kgs. of copper wire rods at the time of clearance and the appellant is liable to pay duty of Rs. 9520/- on 595 kgs. of copper wire rods. The fact that 2505.100 kgs. of copper wire rods was removed from the appellant's factory

premises, or not, was not at all relevant. 3100 kgs. of copper wire rods was found being clandestinely removed without any invoice and the appellant had no option but to pay duty on the entire goods found.

8. I, however, find substance in the submission of the appellant's counsel that the amount of redemption fine is on the higher side. As mentioned above, the total value of the goods as found that the authorities works out to Rs. 3,10,000/- on which duty of Rs. 49,500/- was chargeable. Section 34 of the Central Excise Act lays down that whenever confiscation is adjudged under the Act or the rules made thereunder, the officer shall give the owner of the goods an option to pay in lieu of confiscation such fine as the officer may think fit. The provision is somewhat different form those of Section 125 of the Customs Act which contains similar provision regarding payment of redemption fine in lieu of confiscation, the proviso thereto however lays down that such fine shall not exceed the market price of the goods confiscated less, in the case of imported goods, the duty chargeable thereon. In the absence of any like provision in Section 34 of the Central

Excise Act the authority would appear to have a wide discretion in the matter of quantification of the redemption fine as he deems fit. In my opinion, however, even though under Section 34 the Excise Officer has discretion to quantify the fine as he deems fit, the discretion has to be exercised judiciously and not arbitrarily. The value of the goods being Rs. 3,10,000/-. I am of the view that the redemption fine of Rs. 1,00,000/- was on higher side. It is kept in mind that in any case the person is required to pay duty, in the instant case, Rs. 49,600/-. The only thing is that he may also take the goods back which otherwise stands confiscated on payment of fine in lieu of confiscation. What should be quantum of redemption fine would depend on the facts and circumstances of the case and no strait-jacket formula can be laid down. Broadly, it would depend on the nature of violation, the nature of goods, its market price and attending circumstance. Keeping in view these relevant factors, in the facts and circumstances, I am of the opinion, that redemption fine of Rs. 50,000/- (fifty thousand) would be just and proper.

9. Counsel for the appellant also made grievance of confiscation of the vehicle with option of redemption on payment of redemption fine of Rs. 10,000/-. The submission has been noticed only to be rejected, for, there is nothing to suggest that the appellant is required to pay the amount. Apart from the fact that payment of redemption fine is optional, in lieu of confiscation, it is not the case of the appellant that he is owner of the vehicle. Indeed, it is the common case of parties that the owner of the vehicle was Chander Pal. Thus, if any grievance were to be made regarding confiscation of the vehicle or imposition of redemption fine, the proper person to do so would be Chander Pal and not the appellant. The submission of the counsel in this regard is rejected.

10. In the result, the appeal is dismissed subject to the reduction in the amount of redemption fine as above.

(Dictated and pronounced in open court)

(Justice S.N. Jha)
President

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