

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
SINGLE MEMBER APPEAL BRANCH

Date 27/03/2008

Appeal No. E/3903/2006-SM[BR]

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


To :
C.C.E. LUCKNOW
HALL NO. 2, 8TH FLOOR, KENDRIYA BHAWAN,
ALIGANJ, LUCKNOW - 226024.

C.C.E. LUCKNOW

M/S KUNDAN CASTINGS (P) LTD.


I am directed to transmit herewith a certified copy of Final order No. 483 /2008 -SM[BR] dated 28.1.2008
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944

Appellant
Vs
Respondent


Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
M/S KUNDAN CASTINGS (P) LTD.
B-52 & 53, UPSIDC IND. AREA, MALWAN,
FATEHPUR. U.P.
2. Adv. / Consult SHRI BIPIN GARG ADV
B-1/1289-A, VASANT KUNJ NEW DELHI-110070
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**


COURT -II

EXCISE APPEAL No. 3903 OF 2006-SM

[Arising out of Order-in-Appeal No. 91-CE/06 dated 28.07.2006 passed by the Commissioner (Appeals), Central Excise & Service Tax, Lucknow]

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?	

CCE, Lucknow

Appellant

Vs.

M/s. Kundan Casting (P) Ltd.

Respondents

Appearance:

Shri B.S. Suhag, DR, for the appellant,

Shri Bipin Garg, Advocate for the respondents

Coram:

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

Date of Hearing: 23.1.2008

FINAL ORDER NO. 483/08-SM/DR dated 28.1.08

Per S.S. Kang:

Heard both sides.

2. The Revenue has filed this appeal against impugned order passed by the Commissioner (Appeals) whereby demand of duty and penalty in respect of shortage of inputs were set aside.
3. Brief facts of the case are that premises of the respondents was visited by the officers of Revenue and during verification it was found that there was shortage of 348.4 M.T. of sponge iron i.e. input. The adjudicating authority confirmed the demand and imposed penalty. The Commissioner (Appeals) in the impugned order after going through the evidence on record held that weighment of sponge iron was done by counting of bags and not by physical weighment. Therefore, shortage arrived on estimation cannot be made ground of demand.
4. Contention of the Revenue is that though weight of sponge iron was arrived by counting of bags the shortage was admitted by the representative of respondent. The Revenue relied upon the decision of the Tribunal in the case of CCE, Chandigarh vs. Nabha Steels Ltd.,

reported in 2004 (169) ELT 345 and in the case of Majestic Auto Ltd. vs. CCE, Ghaziabad, reported in 2004 (172) ELT 391 (Tri.-Delhi). The contention is that as the correctness of Panchnama is not disputed at the spot and shortage admitted hence, demand was rightly made.

5. I find that at the time of physical verification of stock on the Panchnama it was written by authorized representative 'weight of sponge iron not by weighing machine but by counting of bags'. There is no admission on record by the respondents that the goods were found short and the same were cleared without payment of duty. In the case law relied upon by the Revenue the Tribunal held that when the method of weighment was accepted by the assessee and admitted the shortage, objection to the verification at later stage is not maintainable. In the present case I find that at the time of verification endorsement was made on the Panchnama that weight of sponge iron is arrived at by counting the bags and not by actual weighment. As the shortage is arrived at on estimation basis I find no merit in the appeal. Therefore, appeal is dismissed.

(Dictated & pronounced in the Open Court.)

(S.S. KANG)
VICE PRESIDENT

Dated 28th January, 2008
RK