TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

**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/248 /2007 – SM[BR]    Date 10/10/2008

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

To :
M/S JANAK STEEL & TUBES LTD.
9TH KM, DELHI ROAD, HISSAR 125044
ALSO AT : 49A/41, PUNJABI BAGH, NEW DELHI
110026.

M/S JANAK STEEL & TUBES LTD. — Appellant

Vs

C.C.E. ROHTAK — Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1360 / 2008- SM[BR] dated 2.9.2008

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. ROHTAK
   17-P, SECTOR 1, ROHTAK.
2. Adv. / Consult SHRI V. SWAMINATHAN ADV.
   G -50, [IIND FLOOR SIDEENTRANCE]
   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. 46. Saket. New Delhi 110017
7 M/s Centax Publictions (P) Ltd., 1512-B. Bhishm Pitamah marg. Opp. ICICI Bank of Defence Colony. New - 3
8 Excise & Customs cases. B-37. Sector -1. NOIDA - 201301 Gautam Budh Nagar. (U.P.)
9 Raghuraman's 44-B. Regal Flat.Shipra Suncity. Indirapuram - 201010.Ghaziabad. DT. U.P.
10 Nidheshak publications. I.P.Estate. new Delhi
11 Taxmann Allied Service Pvt Ltd., 21/35. West Punjabi Bagh. New Delhi - 110026
12 Commercial Laws of India Pvt Ltd Post Bag No. 1033. No.70(Old No. 88). Thyagaraya Road. T. Nagar.Chennai
13 Taxindiaonline.com Pvt.Ltd. B-XI/8183.Vasant Kunj. New Delhi - 110070
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-1
15 Office Copy
16 Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Excise Appeal No.248 of 2007-SM (BR)

[Arising out of Order-in-Appeal No.46/06 dated 29.12.2006 passed by the Commissioner of Central Excise, Rohtak]

**Date of Hearing/ Decision:02.09.08**

**For approval and signature:**

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

---

1. Whether Press Reporters may be allowed to see 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? :

---

M/s. Janak Steel Tubes Ltd. ...Appellants
[Rep. by Shri V. Swaminathan, Advocate]

Vs.

CCE, Rohtak ...Respondent
[Rep. by Shri A.K. Rastogi, DR]

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

Final Order No...1360......./Dated:02.09.2008 SM (BR)

**Per P.K. Das**:

The relevant facts of the case, in brief, are that the Appellants are engaged in the manufacture of steel tubes and pipes classifiable under sub-heading No.7306.90 of the Schedule to the Central Excise Tariff,

1944. On 9.9.98, the Central Excise Officers visited the Appellant's factory and conducted stock verification and recovered several documents and also recorded statements of various persons. A show cause notice was issued proposing demand of duty of approximately Rs.11,57,331/-, which was confirmed by the Adjudicating Authority. By Final Order dated 31.02.2001, the Tribunal set aside the Adjudication Order and remanded back the matter to the Commissioner of Central Excise for fresh adjudication in accordance with law after affording a reasonable opportunity of hearing and to consider the request of the Appellants for cross examination of the private parties whose statements were recorded. In the de novo adjudication proceedings, the Commissioner of Central Excise, modified the demand of duty and confirmed the demand of duty of Rs.1,64,080/-, which was appropriated against the deposit of Rs.3,00,000/- by the Appellants during investigation and also imposed penalty of equal amount under Section 11 AC of the Central Excise Act, 1944 along with interest. Hence, the Appellants filed this appeal.

2. Ld. Advocate on behalf of the Appellants submits that the demand of duty was raised on the basis of the statement of the Director and the two drivers, who had retracted subsequently. He further submits that inquiry was made to the customers, who stated that they have not received the goods. He further submits that the Manager of the Transport Company in his statement stated that they have not delivered the goods and no G.R. was issued by them. So, the demand of duty is not

sustainable without any evidence. He also submits that the drivers denied the statements in their cross objections. He relied upon the decision of the Tribunal in the case of Aparna Paper Processing Vs. CCE, Kolkata - 2005 (186) ELT 249. He further submits that there is no clandestine removal of the goods and, therefore, demand of duty and penalty are not sustainable.

3. Ld. DR reiterates the findings of the Commissioner (Appeals). He submits that the Appellants retracted the statements in their reply to the show cause notice and the Adjudicating Authority rightly observed that it is an afterthought. He further submits that parallel invoices were recovered from the factory premises of the Appellants. He relied upon the decision of the Tribunal in the case of Welcure Drugs & Pharmaceuticals Ltd. Vs. CCE, Jaipur-I reported in 2007 (213) ELT 710 (T-D).

4. After hearing both the sides and on perusal of the records, it is seen that the parallel invoices were recovered from the factory premises of the Appellants. Shri Kailash Chander Sharma, Director, in his statement dated 8.1.99 admitted that the invoices were prepared by them and the goods were sold without payment of duty. The two truck drivers in their statement admitted the clearance of the goods. Ld. Advocate submits that the Director and the Drivers retracted the statements on the very next day before the ld. Executive Magistrate. It appears that the said retraction of the statements were submitted at the time of filing of reply to the show cause notice. Ld. Advocate failed to give any reason as to why the said

retraction were not placed before the Central Excise Authorities immediately. So, the Adjudicating Authority rightly observed that the retraction of statements are afterthought.

5. On perusal of the cross examination reports of the two drivers, it is seen that in reply to the question as to whether they have retracted the statement, it was replied that they have no knowledge. Then, it was stated that they have not transported the materials from the factory to the transport premises and the statements had been recorded under coercion. It is surprising to note that the drivers have no knowledge of the retraction of the statements, on the other hand, it was stated that the statements were recorded under coercion, are totally mis-conceived, inconsistent and cannot be reliable. It is noted that the Director of the Company was not cross examined. So, the statements of the director and the drivers are acceptable and justified. The ld. Advocate stated that the Commissioner observed that the goods were cleared neither to the consignee and to the other places, which was not disclosed by the Revenue. I do not find any force in the submission of the ld. Advocate. It is seen that the extra copy of parallel invoices were found in the Appellants' factory premises. The Director and the truck driver admitted the clearance of the goods. The statements of the customers have no relevancy in this situation. Therefore, it is proved that the goods are cleared clandestinely. The demand of duty and penalty are upheld. The Hon'ble Delhi High Court in the case of Malbro Appliances Pvt. Ltd.

reported in 2007 (208) ELT 503 held that Ist proviso to Section 11 AC is providing penalty of 25% of duty, if duty is deposited by the assessee, within 30 days of the order. In the present case, the Appellants deposited the duty before issue of show cause notice. So, penalty is reduced to Rs.41,000/- (Rupees Forty One Thousand only) (i.e. 25% of the duty). The appeal is disposed of in the above terms.

Order dictated & pronounced in open court on 2.09.08.

( P.K. Das )
Member (Judicial)

Ckp.