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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/184 /2007 – SM[BR] Date 10/10/2008

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

To :
M/S MODI ARC ELECTRODES CO
MODINAGAR, GHAZIABAD, UP

M/S MODI ARC ELECTRODES CO Appellant
Vs
C.C.E.GHAZIABAD Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1365 / 2008- **SM[BR]** dated 3.10.2008 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.GHAZIABAD
   NEW CGO COMPLEX, KAMLA NEHRU NAGAR, GHAZIABAD.
2. Adv. / Consult
   MR. P.C. JAIN ADV.
   332 ARAVALI APTTS, ALAKNADA NEW DELHI 110019
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)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K. Puram, New Delhi - 110066

COURT-IV

Date of hearing/pronouncement:3.10.2008

Central Excise Appeal No.184 of 2007

Arising out of the order in appeal No.203-CE/GZB/2006 dated 13.12.2006 passed by the Commissioner, (Appeals), Central Excise, Ghaziabad.

For Approval and Signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2	Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3	Whether their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

Appellants — Respondent

M/s Modi Arc Electrodes Co. vs. C.C.E., Ghaziabad

Appearance:

Shri P.C. Jain, Advocate for the appellant(s) and
Shri K.K. Goyal, Authorized Departmental Representative (Jt.CDR) for the Revenue

Coram: Hon'ble Mr. M. Veeraiyan, Member (Technical)

Final Order No. 1365/08 SM-(BR)

Per M. Veeraiyan:

This is an appeal against the order of Commissioner (Appeals) No. 203-CE/GZB/2006 dated 13.12.2006.

2. Heard both sides.

3. The premises of the appellant was visited on 28.10.04 and the stock taking was conducted in the presence of panchnama witnesses and it was found that there were shortages of certain categories of finished goods and shortages in respect of inputs on which cenvat credit was availed. In his

statement dated 28.10.04, Shri S.K. Warshney, Manager (Finance & Accounts), an authorized signatory of the appellant unit admitted to the shortages as mentioned in the panchnama and submitted that he was not in a position to account for the shortages. The original authority has confirmed the duty amounting to Rs.48,769/- and imposed an equal amount of penalty under Rule 25 of Central Excise Rules and Rule 15 of the Cenvat Credit Rules read with Section 11AC of the Central Excise Act, 1944. Commissioner (Appeals) upheld the order of the original authority.

4. Learned Advocate for the appellants submits that there were 300 varieties of finished goods and the stock taking was taken only in the finished goods from store room, that too in respect of 26 items and discrepancy was noticed only in respect of 4 items. He submits that unless the entire factory was subject to stock taking, the actual stock position would not be clear. He also submits that shortage of inputs cannot be presumed merely on taking stock of inputs in store room and the verification should have been extended to shop floor so that the position can be ascertained. Removal from the factory without preparation of document is not doubt an offence. However, removal from the store room to the shop floor without the documents cannot be held to be an offence, he added. He also relies on the following decisions:

a) Shamsons (India) vs. C.C.E., Kanpur - 1998 (101) ELT 483 (Tri.)
b) Metal Fitting (P) Ltd. vs. C.C.E., Delhi - 1997 (93) ELT 747 (Tri.)
c) Prabhat Industries vs.C.C.E., Valsad - 2006 (193) ELT 253 (Tri-Mumbai)
d) Fenil Udyog vs.C.C.E., Mumbai - 2006 (205) ELT 1067 (Tri-Mumbai)

5. The learned Jt.CDR submits that stock taking was done in the presence of authorized signatory and in the presence of witnesses. Shortage has been clearly admitted by the authorized signatory. There is no warrant to say that unless the stock taking is taken ~~from~~ for the entire range of finished goods, no

duty can be demanded in respect of shortages found. He submits that every category of goods manufactured is required to be accounted for. He also submits that once the authorized signatory, a responsible person has admitted the shortages, the question of further investigation to prove the shortage is not necessary and warranted. He relies on the following decisions:

a) *Friends Auto (India) Ltd. v. C.C.E.,Faridabad - 2004 (167) ELT 228 (Tri- Del.)*

b) *Mahavir Aluminium Ltd. vs.C.CE.., Jaipur - 2004 (175) ELT 315 (Tri- Del.)*

c) *C.C.E., Chandigarh vs. Vimal Alloys Ltd. - 2004 (168) ELT 33 (Tri.-Del.)*

d) *Bikaner Steel Industries vs. C.C.E., Ludhiana - 2005 (188) ELT 309 (Tri-Del.)*

6. I have carefully considered the submissions from both sides. It is true that stock taking has not covered all varieties of goods, which are around 300 in numbers but has been done only in respect of 26 items and shortage was found in 4 items. It is not disputed that demand Is restricted to only shortage found. The responsibility of an assessee to account for every category of goods in their books of accounts cannot be waived. In this case, the authorized signatory clearly admitted the shortage. Therefore, the demand of duty on the admitted shortage of goods both finished as well as inputs on which cenvat credit is taken cannot be found fault with. However, every case of shortage cannot be treated as clandestine removal. Therefore, while upholding the demand of duty on the goods not accounted for and found short, I hold that there is no justification for imposition of penalty.

7. The appeal is partly allowed by setting aside the penalty while confirming duty on shortages admitted.

(Dictated and pronounced in the Court)

(M. Veeraiyan)
Member (Technical)

scd/