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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/3869/2005 – SM[BR]

Date 10/11/2008

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

To :
M/S BALBIR STEELS PVT LTD
B-6, INDUSTRIAL AREA, ORAI, DISTT. JALAUN (U.P.)

M/S BALBIR STEELS PVT LTD — Appellant
Vs
THE COMMISSIONER OF CENTRAL EXCISE KANPUR — Respondent

I am directed to transmit herewith a certified copy of **Final order No. 1428 / 2008-SM[BR]** dated 4.9.2008 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
THE COMMISSIONER OF CENTRAL EXCISE KANPUR
117/7, SARVODAYA NAGAR, KANPUR
2. Adv. / Consult
MR.R.SANTHANAM
C-3/210, JANAK PURI, NEW DELHI - 110 058.

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

COURT-IV

Date of hearing: 04.9.2004

Appeal No.E/3869/2005-SM

(Arising out of Order-in-Original No.04/Commr./MP/2005 dated 14.10.2005 passed by the Commissioner of Central Excise, Kanpur)

For approval and signature:

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

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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 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 Balbir Steel (P) Ltd. & others Appellant/Applicant
(Shri R. Santhanam Advocate for the Appellant/Applicant)

Vs.

CCE, Kanpur Respondent
(Rep. by Shri R. K. Verma, DR for the Respondent)

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

Final Order No. 1428/08-SM(BR)

Per: P.K. Das

After hearing both the sides and on perusal of the records, it is seen that the present proceeding is arising out of the remand order of the Tribunal vide Final Order No. E/119-121/04 NB dated 11.02.2004. The Tribunal remanded the matter to the Adjudicating Authority for re-computing amount of duty on the basis of 1100 units of electricity required for 1 M.T. of M.S. ingots. It has also been directed that the Adjudicating Authority is at liberty to impose penalty commensurate with amount of duty confirmed, if any, and not exceeding the amount of penalty confirmed in the earlier Adjudicating Order.

2. The Adjudicating Authority confirmed the demand of duty Rs.4,83,596.00 and recovery of Modvat Credit of Rs. 30,073.52 and penalty of Rs. 50,000.00. On perusal of the Adjudicating Order it is seen that the Appellant submitted before the Adjudicating Authority that they were willing to pay differential duty as per Tribunal decision accepting 1100 units of power consumption for producing 1 MT of Ingots. It was also submitted that the factory was closed for the last eight years and therefore they were admitting the order of the Tribunal's Decision and a lenient view should be taken for the imposition of penalty. They produced a chart showing calculated of differential duty of Rs.1,49,841,72. The Adjudicating Authority calculated the demand of duty on the basis of 1100 units of power

consumed for 1 M.T. of MS Ingots during the relevant period except in some months where the Appellant shown in the statutory records more consumption than 1100 units.

3. The ld. Advocate submits that the demand of duty on the basis of actual production on the said months is beyond the scope of remand order. I do not find any force in the submission of ld. Advocate. The Tribunal Order to calculate on the basis of 1100 units power consumption for 1 M.T. of MS Ingots is applicable for disputed period and not applicable in the case where the actual production was shown more then 1100 units as recorded in the statutory records. Hence, I find that the demand of duty is justified and it is upheld. However, I agree with submission of the ld. Advocate as regards imposition of penalty. It is seen that the Appellant accepted the demand of duty as the factory is closed for the last 8 (eight) years. Therefore, taking into account of overall facts and circumstance of the case, imposition of penalty is not warranted. Accordingly, demand of duty and interest are upheld. Penalty is set-aside. The appeal is disposed of in the above terms.

(Dictated and pronounced in the open court).

(P.K. Das)
Member (Judicial)

K. Gupta