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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/2846/2006-SM[BR]

Date 12/06/2008

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

To :
C.C.E. JAIUR-I
NCRB,STATUE CIRCLE,C-SCHEME,JAIPUR

C.C.E. JAIUR-I Appellant
Vs
M/S SHARMA COMMERCIAL PVT LTD Respondent

I am directed to transmit herewith a certified copy of **Final order** No. 917 /2008 –SM[BR] dated 2.5.2008 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
M/S SHARMA COMMERCIAL PVT LTD
90,91,91A,INDUSTRIAL AREA,JHOTWARA,JAIPUR
2. Adv. / Consult SHRI RAVI RAGHAVAN ADV.
B-6/10 SAFDARJUNG ENCLAVE NEW DELHI-29

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 Delhi -
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 60017
13. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Office Copy
15. 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.2846 of 2006-SM (BR)

[Arising out of Order-in-Appeal No.186(MPM)CE/JPR-I/2006 dated 01.06.2006 passed by the Commissioner of Central Excise (Appeals), Jaipur]

Date of Hearing/ Decision:2.5.2008

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?	:	NO
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, Jaipur ...Appellants
[Rep. by Shri B.S. Suhag, DR]

Vs.

M/s. Sharma Commercial (P) Ltd. ...Respondents
[Rep. by Shri Ravi Raghavan Advocate]

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

Final Order No...917/08-SMB/Dated:2.5.2008

Per P.K. Das:

The relevant facts of the case, in brief, are that the Respondents are engaged in the manufacture of M.S. Ingots classifiable under Chapter 72 of the Schedule to the Central Excise Tariff Act, 1985. On 17.2.2005, the Central Excise Officers visited the Respondent's factory and verified the stocks. It was ascertained shortage of M.S. Scrap on which the Respondent availed Cenvat Credit. Show cause notice was issued proposing demand of duty on the basis of that the inputs were converted into finished goods and cleared clandestinely. The Adjudicating Authority confirmed the demand of duty and imposed penalty of equal amount under section 11 AC of the Central Excise Act, 1944. The Commissioner (Appeals) modified the Adjudication Order. Commissioner (Appalls) observed that there is no clandestine removal of the finished goods and the Respondent reversed the Cenvat Credit on the shortage of inputs before the issue of the show cause notice and, therefore, the penalty was set aside. Revenue filed this appeal against the Order of the Commissioner (Appeals).

2. Ld. DR on behalf of the Revenue submits that the Representative of the Respondent Company in his statement admitted the shortage/excess of the goods. He further submits that the Respondent in their statement stated that they had never cleared M.S. Scrap as such from their unit and, therefore, it is amply clear that the inputs were used in the manufacture of finished goods, which were cleared clandestinely. So, the demand of duty and imposition of penalty are justified.

3. Ld. Advocate on behalf of the Respondent reiterates the findings of the Commissioner (Appeals). He submits that the Respondent reversed

the Credit on the shortage of the inputs before issue of the show cause notice. He further submits that the actual stock of M.S. Scrap was not taken by the Central Excise Officers during stock verification. He relied upon the decision of the Punjab & Haryana High Court in the case of CCE, Ludhiana Vs. Sigma Steel Tubes – 2007 (82) RLT 361 (P&H).

4. After hearing both the sides and on perusal of the records, I find that the shortage of inputs was detected during the stock verification. The Respondent admitted the shortage of inputs and reversed the credit before the issue of the show cause notice. The Respondent in their statement stated that the M.S. Scrap was not cleared as such from their factory. There is no material that the M.S. Scraps were removed clandestinely. The Adjudicating Authority confirmed the demand of duty on the ground that the quantity of shortage of inputs used in the manufacture of finished goods were cleared clandestinely. The entire finding of the Adjudicating Authority is based on presumption. It is well settled that the demand of duty is not sustainable on the basis of mere conjuncture. In any event, there is no material for clandestine removal of the goods. So, Section 11 AC of the Central Excise Act, 1944 cannot be invoked. The Hon'ble Punjab & Haryana High Court in the case of Sigma Steel Tubes (supra) held that under Section 11 AC of the Act, penalty is not leviable when duty is paid before issue of the show cause notice.

5. In view of the above discussion, I do not find any reason to interfere the order of the Commissioner (Appeals). Accordingly, the appeal filed by the Revenue is rejected.

Order dictated & pronounced in open court on 2.5.2008.

(P.K. Das)
Member (Judicial)

Ckp.