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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/2851/2006-SM[BR] Date 25/06/2008

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

To :
CCE JAIPUR

NCRB,SATUE CIRLCE,C-SCHME,JAIPUR

CCE JAIPUR Appellant

Vs

M/S SHREE SHARMA RE-ROLLING MILLS Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 987 /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 SHREE SHARMA RE-ROLLING MILLS

   90 ABC,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, R.K. PURAM, W.B. NO.2, PRINCIPAL BENCH NEW DELHI, COURT NO. III

Excise Appeal No.2851 of 2006-SM (BR)

[Arising out of Order-in-Appeal No.187(MPM)CE/JPR-I/2006 dated 25.5.2006 of the Commissioner of Central Excise (Appeals), Jaipur]

Date of Hearing: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? :
3. Whether Their Lordships wish to see the fair copy of the Order? :
4. Whether Order is to be circulated to the Departmental authorities? :

N.

CCE, Jaipur ...Appellants
[Rep. by Shri B. S. Suhag, DR]

Vs.

M/s. Shree Sharma Re-Rolling Mills ...Respondent
[Rep. by Shri Ravi Raghavan. Advocate]

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

Final Order No. 987/08-SM(BR) /Dated:2.5.08

Per P.K. Das:

The relevant facts of the case, in brief, are that the Respondents are engaged in the manufacture of CTD Bars classifiable under Heading

No.7204.90 of the Schedule to the Central Excise Tariff Act, 1985. On 16.2.2005, the Central Excise Officers intercepted a truck loaded with CTD Bars of various sizes accompanied with copy of challan No.2988 dated 16.2.2005 of M/s. Peesons Steels, Jaipur and weighment slip showing net weight of 9260 Kgs. The Driver of the truck in his statement on the spot stated that the goods were loaded at the Respondent's factory and he was not given any other documents. The Central Excise Officers seized the goods loaded in the said truck. On 17.2.2005, the Central Excise Officers conducted stock verification of finished goods and raw materials at the Respondent's factory; and shortage of inputs M.S. Ingots 35.497 M.T. was found. The Respondent debited the duty of Rs.80,379.50 on the shortage of inputs vide R.G.23A Part-II Entry Sl.No.918/43 dated 17.2.2005. On inquiry, the representative of the buyer (i.e. M/s. Peesons Steels) on 17.2.2005 stated that he received the central excise invoices from the Respondent and he had kept it with himself. Show cause notice was issued proposing confiscation of seized goods. It has also proposed demand of duty on finished goods alleging that shortage of inputs were found used in the manufacture of finished goods and removed clandestinely. The Adjudicating Authority confiscated the seized goods loaded in the truck and imposed redemption fine of Rs.10,000/- on truck, Rs.15,000/- on the seized goods and ordered for recovery of the duty on the seized goods. He also confirmed the demand of duty of Rs.89,381/- on C.T.D. Bars and appropriated the amount of Rs.80,379/- already debited by the Respondent. He also imposed penalty of equal amount of duty under Section 11 AC of the Central Excise Act, 1944. The Commissioner of Central Excise (Appeals) modified the Adjudication Order. He observed that the seized goods were duty paid vide Invoice No.1555 dated 16.2.2005 and confiscation, redemption fine and penalty are not sustainable thereon. He further observed that there is no clandestine removal of CTD Bars. The Respondent reversed the Credit on inputs and, therefore, duty paid, in excess, if any, on CTD Bars is to be refunded to the Respondent. Revenue filed this appeal against the order of the Commissioner (Appeals).

2. Ld. DR on behalf of the Revenue submits that there is no dispute that the seized goods were not accompanied with the duty paying documents and the Adjudicating Authority rightly observed that the invoices produced by the Respondent subsequently is an afterthought. He further submits that the seized goods were not accompanied with duty paying documents and, therefore, confiscation and penalty are justified. Regarding the demand of duty on the CTD Bars, he submits that the Respondent voluntarily paid the duty on the CTD Bars and no proper explanation was given thereon. It is contended by the ld. DR that the Respondent deposited the duty voluntarily and the order of the

Commissioner (Appeals) to refund the excess amount, if any, paid on CTD Bars is highly improper.

3. Ld. Advocate on behalf of the Respondent reiterates the findings of the Commissioner (Appeals). He submits that the Respondent delivered the materials to their buyers. The Representative of the buyers kept the central excise invoices with himself as revealed from the statement. Therefore, there is no regularity on the part of the Respondent. He further submits that the shortage of inputs was detected during stock verification. He submits that the Respondent reversed the Credit on the shortage of inputs before issue of the show cause notice and, therefore, the demand of duty converting the inputs into finished goods and imposition of penalty under Section 11 AC of the Central Excise Act, 1944 are not warranted. He relied upon the decision of the Punjab & Haryana High Court in the case of CCE Vs. Sigma Steel Tubes Ltd. Reported in 2007 (82) RLT 361 (P&H).

4. After hearing both the sides and on perusal of the records, I find that on 16.2.2005, the Central Excise officers intercepted the truck loaded with CTD Bars accompanied with challan of M/s. Peesons Steels, Jaipur. It is seen from the Adjudication Order that Shri Pankaj Agarwal, Authorised Signatory of M/s. Peeson Steels in his statement dated 17.2.2005 stated that his employee, Shri Ram Vilas received the said invoice from the Respondent and kept it with himself. It is also stated that

on the basis of the above invoice, delivery challan was issued and handed over to the truck driver. The Adjudicating Authority observed that the statement of Shri Pankaj Agarwal on 17.2.2005 is an afterthought. He has proceeded on the basis of the statement of the truck driver at the time of interception of the truck. I find that the goods were intercepted on 16.2.2005 at night accompanied with the challan. The very next day, i.e. 17.2.2005 he explained that the good were delivered to them and the challan was issued on the basis of central excise invoices. They have also produced central excise invoices to the visiting Central Excise Officers. So, the findings of the Adjudicating Authority, at this regard, is not sustainable. Regarding shortage of inputs, I find that it was detected during stock verification and the respondents reversed the Credit on the shortage of inputs. The demand of duty on the basis of converting the inputs into finished goods is without any material. It is well settled that the demand of duty cannot be based on mere presumption. There is no materials produced by the Revenue in support of their contention that the shortage of the inputs was converted into finished goods and clandestinely removed. So, the imposition of penalty under Section 11 AC of the Central Excise Act, 1944 is not warranted. The Hon'ble Punjab & Haryana High Court in the case of Sigma Steel Tubes (supra) held that penalty is not leviable under Section 11 AC of the Act when duty is paid before the issue of the show cause notice.

5. In view of the above, 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.