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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. C/10 /2008-SM[BR] Date 26/06/2008

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

To :
M/S SABOO ISPAT (P) LTD.
TRIKOKPUR ROAD, KALA AMB, DIST - SIRMOUR,
H.P.

M/S SABOO ISPAT (P) LTD. Appellant
Vs
C.C. (ICD) NEW DELHI Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1000 /2008 –SM[BR] dated 29.5.2008 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
C.C. (ICD) NEW DELHI
ICD, TUGHLAKABAD, NEW DELHI 110020.
2. Adv. / Consult
MR.AJAY JAIN
1293, SEC 18-C, CHANDIGARH
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)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO.II

C/Appeal No. 10/08-SM

(Arising out of order in appeal No.CC(A)/Cus/Icd/D.II/Rev/157/07 dated 9.11.2007 passed by the Commissioner of Central Excise (Appeals), New Delhi)

For approval and signature:

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

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?

No

M/s Saboo Ispat (P) Ltd — Appellant
(Rep. by Shri Ajay Jain, Advocate)

Vs

CC, New Delhi — Respondent
(Rep. by Shri A.K. Rastogi, DR)

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

Date of Hearing: 29.5.08

Final Order No. 1000 /2008-SM(BR)

Per **P.K. Das**:

The relevant facts of the case, in brief, as per record are that the Appellants imported HMS Metal Scrap vide Bill of Entry No. 391212 dated

20th November, 2004 and No. 390955 dated 19th November, 2004. The examination of the goods was conducted at the factory premises of the Appellant by the Central Excise officers and found shortage of 82.680 MTs. The Appellants filed refund claim of Rs. 1,56,200/- of Customs duty on the shortage. The Adjudicating Authority sanctioned the refund claim. Revenue filed Appeal before the Commissioner (Appeals) whereby the Adjudication order was set aside. Hence the Appellants filed this Appeal.

2. The learned Advocate submits that the Revenue filed appeal before the Commissioner (Appeals) on the ground that the shortage was detected at the premises of the importer and therefore, refund of duty is not admissible. He submits that the Tribunal in a series of decisions held that when short receipt of goods was admitted, the importer is entitled to refund of duty. He relied upon the following decisions of the Tribunal:-

CCE Bangalore Vs Kennametal Widia India Ltd
2007 (213) ELT 353 (Tri.-Bang)

CC (Import) Nhava Sheva Vs Motor Industries Co. Ltd
2008 (225) ELT 235 (Tri. Mum)

3. The learned DR reiterates the finding of the Commissioner (Appeals). He submits that the Adjudicating Authority sanctioned the refund claim on the basis of the examination report of the Superintendent of Central Excise and Inspector of Central Excise. He submits that the Tribunal in the case of CC Madras Vs Guindy Machine Tools Ltd reported in 2004 (171) ELT 424 (Tri. Chennai) held that shortage of goods found for the first time in the importer's premises, it can hardly be a case of short landing.

4. After hearing both the sides and on perusal of the record, it is seen that the Adjudicating Authority sanctioned the refund claim on the basis of

details of examination of imported scrap by the Central Excise Authorities. The relevant portion of the said report is reproduced below:-

"The containers mentioned at Sl No. 6 above were examined on 27.11.2004 in the premises of M/s Saboo Ispat Pvt Ltd. All the seals were found intact as per ICD, New Delhi seals report. The containers were opened for unloading under our direction. There was Rusty/Soil mud covered material, Rusty paint containers. There was sluggish material in the scrap. The weight unloaded from these containers was found 21.270 MT instead of 42.000 MT as shown in B/E No 390955 dated 19.11.2004."

5. The Revenue filed Appeal before the Commissioner (Appeals) on the ground that the shortage of goods was detected at the premises of the Importer, subsequent to the clearance from the port of import and therefore, the refund claim cannot be accepted. I find that the Revenue had not disputed the short receipt of goods. It is the contention of the Revenue that shortage of goods was detected at the premises of the Importer and therefore, it cannot be accepted. In the present case, it is seen from the examination report that all the seals were found intact as per ICD, New Delhi Seals report. There is no dispute regarding shortage of goods found by the Central Excise authorities. The Tribunal in the case of Kennametal Widia India Ltd (Supra) held that fact of short shipment ~~prior to~~ after clearance from customs port and Range Superintendent issued a certificate of short receipt of goods, grant of refund on the basis of documentary evidence, legal and proper under Section 27 of the Customs Act, 1962. I find that the Tribunal referred the earlier decision in the case of Guindy Machine Tools Ltd (Supra) as cited by

the learned DR. I find that the Revenue had not disputed shortage of goods in their Appeal before the Commissioner (Appeals). So, the Appellants are entitled for refund of duty on the goods which are short landed.

6. In view of the above discussion, I find that the order of the Commissioner (Appeals) is not sustainable. Accordingly, the order of the Commissioner (Appeals) is set aside and the order of the Adjudicating Authority is restored. The appeal filed by the Appellants is allowed.

(Order dictated and pronounced in the open Court).

(P.K. Das)
Member(Judicial)

MPS*