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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/3444/2006-SM[BR] Date 27/06/2008

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

To :
C.C.E. RAIPUR
DHAMTARI ROAD, TIKRAPARA, RAIPUR.

C.C.E. RAIPUR Appellant

Vs

SRINIVAS FERRO ALLOYES LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1019 /2008 –SM[BR] dated 1.4.2008

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
 SRINIVAS FERRO ALLOYES LTD.
 278-279, URLA INDUSTRIAL AREA RAIPUR.
2. Adv. / Consult SHRI SANJIV SEN AND SHRI PARTHA SIL, ADV.
 145, ANARKALI COMMERCIL COMPLEX,
 JHANSENWALAN EXTENSION NEW DELHI- 110055
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.3444 of 2006-SM (BR)

[Arising out of Order-in-Appeal No.143/RPR.I/06 date 24.7.2006 passed by the Commissioner of Central Excise (Appeals), Raipur]

Date of Hearing/ Decision:1.4.2008

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? :

No

CCE, Raipur ...Appellants
[Rep. by Shri A.K. Rastogi, DR]

Vs.

Srinivas Ferro Alloys Ltd. ...Respondent
[Rep. by Shri Sanjiv Sen and Shri Partha Sil, Advocates]

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

Final Order No. 1019/08-SM(BR)/Dated:1.4.2008

Per P.K. Das:

The Revenue filed this appeal against the order of the Commissioner (Appeals), whereby demand of duty, confiscation of the goods were set aside and penalty was reduced to Rs.10,000/-. The relevant facts of the case, in brief, are that the Respondents are engaged in the manufacture of Ferro Alloys falling under Chapter 72 of the Schedule to the Central Excise Tariff Act, 1985. On 2.1.98, the Central Excise officers visited the Respondent's factory and verified the stock of finished goods. They found shortage and excess of finished goods of different description, in packed and loose conditions. On 3.1.98, Shri C.V.A. Verma, Works Manager of the Respondent-Company clarified that 4.5 M.T. of High Carbon Ferro Alloys found in excess was contaminated with foreign elements. Show cause notice was issued proposing the demand of duty on the shortage of finished goods and confiscation of the excess materials and imposition of penalty. The Adjudicating Authority confirmed the demand of duty and imposed penalty of equal amount under Section 11 AC of the Central Excise Act, 1944. He also confiscated the seized goods and imposed redemption fine of Rs.5 Lakhs in lieu of confiscation. The Commissioner (Appeals) set aside the demand of duty, confiscation of the goods and penalty under Section 11 AC of the Act and reduced the penalty to Rs.10,000/- under Rule 226 of the erstwhile Central excise Rules, 1944.

2. Ld. DR on behalf of the Revenue submits that the Respondent accepted the shortage and excess of the goods in their Panchnama and, therefore, adjustment of the excess and shortage of the materials are not permissible. He further submits that Shri C.V.A. Verma, Works Manager signed the Panchnama on 2.1.98 and the statement on 3.1.98 that the quantity of 4.5 M.T. of contaminated goods is without any corroborative

evidence. He further submits that, in any event, the excess materials are liable for confiscation. He relied upon the decision of the Tribunal in the case of PNP Castings (P) Ltd. Vs. CCE, Lucknow reported in 2006 (194) ELT 250 (Tribunal-Delhi).

3. Ld. Advocate on behalf of the Respondent reiterates the findings of the Commissioner (Appeals). He submits that the adjustment of excess and shortage of materials are proper and relied upon the decisions of the Tribunal as under:-

(a) Trac Air-Conditioning Systems Ltd. Ltd. Vs. CCE, Bangalore
2005 (180)ELT 327 (Tribunal-Bangalore)

(b) Bhartiya Tar Udyog Vs. CCE, Delhi-III
2005 (192)ELT 1115 (Tribunal-Delhi).

He further submits that the confiscation of the excess materials, out of which 4.5 M.T. contaminated materials, is not proper. He relied upon the decision of the Tribunal as under:-

(a) Goenka Products Vs. CCE, Allahabad
2005 (186) ELT 75 (T-D)

(b) M/s. Jaysynth Dyestuff India Ltd.Vs. CCE, Surat
2005 (179) ELT 83 (Tribunal-Mumbai)

(c) M/s. Birla Yamha Works Vs. CCE
2005 (183) ELT 194 (T-D)

(d) M/s. Jai Bharat Metal Industries Vs. CCE
2005 (179) ELT 361 (T-D)

4. After hearing both the sides and on perusal of the records, it is seen that the Respondent had given a Chart showing a stock position and adjustment of excess stock/shortage materials in their reply to the show cause notice and which was re-produced in the Adjudication Order as under:-

Sl.No.	Description of the Goods	Chapter Sub heading	Difference of quantity found in excess (+)/shortage (-) as compared to recorded stock (M.T.) in RG-1			Value (Rs.)	
			Packed		Loose	Packed	Loose
			No. Of Bag	M.T.			
1	High Carbon Ferro Chrome	7202 00	1645	+82 250	- 23.100	1809500	50[illegible]178
2	High Carbon Ferro Manganese	7202.00	90	+4.500	3 600	91000	[illegible]
3.	Silico manglas	7202.00	581	+29 050	11 070	610050	[illegible]
				TOTAL VALUE IN RS.		2500550	[illegible]

5. On perusal of the above Chart, it appears that there was shortage of loose quantity and excess of packed quantity. The Tribunal in the case of Trace Air-Conditioning Systems Ltd. (supra) held that in absence of any charge that assessee had removed the goods without payment of duty mere failure to make proper entry of such goods in RG-I Register does not render such goods liable to confiscation. It is found that the excess and shortage quantities were recorded in the RG-1 Register improperly. In the case of Bhartiya Tar Udyog (supra), it has been held that, prima facie, direct correlation of short found inputs with excess found finished goods, lying in the factory established and no tangible evidence to prove clandestine removal of the inputs short found by the Appellant, confiscation and penalty are not warranted. In the present case, the

Respondent adjusted the loose quantity of finished goods of same quality against the packed quantity, duly recorded in the RG-1 Register. So, the adjustment of packed/loose materials done by the Commissioner (Appeals) is correct. It is seen from the record that on 2.1.98, stock verification was conducted. The very next day on 3.1.98, the Works Manager of the Respondent Company in his statement stated that a quantity of 4.5 M.T. of High Carbon Ferro was contaminated with foreign elements. It is contended by the Respondent that the excess quantity of 4.5 M.T. of contaminated High Carbon Ferro cannot be considered as finished goods. It is seen from the reply to the show cause notice that the seized goods were not released to the Respondent and they requested to draw the samples of the contaminated materials. The Adjudicating Authority observed that the Respondent accepted the excess materials in the Panchnama on 2.1.98 and the statement on 3.1.98 cannot be accepted. I agree with the findings of the Commissioner (Appeals) that the statement of Shri C.V.A. Verma, Works Manager on 3.1.98, which was made just one day after his initial statement dated 2.1.98, should not to have been discarded unless the physical condition of the goods is verified and a contrary view emerged on such verification. So, the confiscation of 4.5 M.T. of High Carbon Ferro Alloys is not justified.

6. The Adjudicating Authority observed that even if shortage/excess adjustments are accepted then also the fact still remains that there was excess stock of 32.771 M.T. of Ferro Alloys in the factory of the

Respondents, which are not minor variation and indicates irregularity on the part of the Respondent. The Commissioner (Appeals) observed that a quantity of 32.771 M.T. of Ferro Alloys was found in excess. It has further been observed that the the Adjudicating Authority has not been able to substantiate the charge of clandestine removal with any other corroborative evidence and the confiscation of goods is unjustified. I do not agree with the findings of the Commissioner (Appeals). There is no dispute that the quantity of 32.771 M.T. of finished goods was found in excess. But, there is no proper explanation given by the Respondent in respect of excess quantity of 32.771 M.T. of Ferro Alloys. Admittedly, the excess quantity was unaccounted and the same were seized from the Respondent's premises and no proper explanation was given and, therefore, confiscation is justified. The Tribunal in the case of PNP Castings (Pvt.) Ltd. (supra) held that the Respondent failed to establish procurement of such goods seized from the Respondent's premises reasonably and confiscation of the goods and penalty are warranted.

7. In view of the above discussion, the impugned order is modified in so far as confiscation of 32.771 M.T. of Ferro Alloys is upheld and the redemption fine is reduced to Rs.60,000/- (Rupees Sixty Thousand only) ~~in person~~. The appeal is disposed of in the above terms.

Order dictated & pronounced in open court on 1.4.2008.

Kp

(P.K. Das)
Member (Judicial)