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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/3213/2006,3237/2006-SM[BR] Date 28/07/2008

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

To :
M/S AGRAWAL ISPAT ROLLING MILLS.
178-F,LIGHT INDUSTRIAL AREA,DURG.

M/S AGRAWAL ISPAT ROLLING MILLS. Appellant

Vs

C.C.E.RAIPUR Respondent

I am directed to transmit herewith a certified copy of **Final order** No. 1096 -1097 /2008 –SM[BR] dated 27.6.2008 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
   C.C.E.RAIPUR
   DHAMTARI ROAD,TIKRAPARA,RAIPUR.
2. Adv. / Consult
   MR.A.K. MISHRA (CONSULTANT)
   B-25, LAJPAT NAGAR-III, NEW DELHI.
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)

1 M/S AGRAWAL ISPAT ROLLING MILLS.
178-F,LIGHT INDUSTRIAL AREA,BHILAI(CG)

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

E/Appeal Nos.3213 & 3137/06-SM(BR)

(Arising out of order in appeal No.70/RPR.I/06 dated 28.6.06 passed by the Commissioner of Central Excise (Appeals), Raipur)

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?

M/s Agarwal Ispat Rolling Mills — Appellant
(Rep. by Shri A.K. Mishra, Advocate)

Vs

CCE, Raipur — Respondent
(Rep. by Shri S.L. Meena, DR)

....

CCE, Raipur — Appellant
(Rep. by Shri S.L. Meena, DR)

Vs

M/s Agarwal Ispat Rolling Mills — Respondent
(Rep. by Shri A.K. Mishra, Advocate)

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

Date of Hearing: 27.6.08

Final Order No. 1096 – 1097 /2008-SM(BR)

Per P.K. Das:

Both the Appeals are arising out of a common order and therefore, these are being taken up together for disposal.

2. The relevant facts of the case, in brief, are that the assessee is engaged in the manufacture of Hot Rolled Products of Non-Alloy Steel falling under Chapter 72 of the Tariff Act, 1985. On 25.9.03, the Central Excise officers visited the assessee's factory and verified the stock. The officers ascertained shortage of raw material and finished goods involving duty of Rs. 48,800/-. Shri Naresh Agarwal, Manager of the assessee accepted the shortage and failed to give any reason. He also debited the amount of Rs. 48,800/- from their RG 23-A Part II vide Entry No.151 dated 25.9.03. The officers found an invoice book whereby it has been alleged that the assessee cleared the goods without payment of duty of Rs. 17,760/-. The Adjudicating Authority confirmed the demand of duty of Rs.48,800/- and Rs.17,760/- and appropriated the amount of Rs. 48,800/- as deposited by the assessee. He also imposed penalty of equal amount of Rs. 66,560/- under Section 11AC of the Central Excise Act, 1944 and penalty of Rs. 5,000/- under Rule 25 of the Central Excise Rules, 2002. The Commissioner (Appeals) modified the adjudication order in so far as the demand of duty of Rs. 17,760/- was set aside and penalty was reduced to Rs. 20,000/- under Section 11AC of the Act and Rs.2,000/- under Rule 25 of the Central Excise Act. The assessee filed an appeal for setting aside the penalty. The Revenue filed appeal for enhancement of penalties.

3. After hearing both the sides and on perusal of the record, I find that the demand of duty of Rs. 17,760/- was set aside by the Commissioner (Appeals) and no appeal was filed by the Revenue. The demand of duty of Rs. 48,800/- was on the shortage of raw material and finished goods detected during stock verification. The learned DR on behalf of the Revenue submits that Commissioner (Appeals) has rightly observed that since such removal of goods have been without payment of duty, therefore, there has been violation of rules with intent to evade duty. He submits that when the goods were removed without payment of duty, the Commissioner (Appeals) should have imposed penalty of equal amount under Section 11AC of the Act. I do not agree with submission of the learned DR. There is no material placed by the Revenue that the goods were cleared without payment of duty. The shortage was detected during stock verification. The Hon'ble High Court in the case of CCE Chandigarh Vs Nachiketa Paper Ltd reported in 2008 (86) RLT225 (P&H) has held that there was shortage of goods and no evidence of clandestine removal or sale of goods, not a case of fraud, wilful suppression or mis-statement of facts etc. and Section 11AC cannot be invoked.

In view of the above discussion, I set aside the penalty under Section 11AC. However, I find that there is violation of Rules and therefore, penalty imposed under Rule 25 of the Central Excise Rules, 2002 is upheld. The Revenue's appeal is rejected. The appeal filed by the assessee is disposed of in the above terms.

(Order dictated and pronounced in the open Court).

(P.K. Das)
Member(Judicial)

MPS*