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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/3970/2006-3971/2006-SM[BR]   Date 31/07/2008

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

To :
C.C.E.CHANDIGARH
PLOT NO 19, SECTOR 17-C, CHANDIGARH.

C.C.E.CHANDIGARH   Appellant
Vs
M/S JAIN STEEL INDUSTRIES   Respondent

I am directed to transmit herewith a certified copy of **Final order No 1113 – 1114 / 2008 –SM[BR]**. dated 21.7.2008

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

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
   M/S JAIN STEEL INDUSTRIES
   G. T. ROAD, MANDI GOBINDGARH.
2. Adv. / Consult SHRI HEMANT BAJAJ ADV.
   A-5, [BASEMENT] LAJPAT NAGAR –III
   NEW DELHI 110024

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 SH SANJAY JAIN, AUTHORISED SIGNATORY
M/S JAIN STEEL INDUSTRIES, G.T. ROAD, MANDI GOBINDGARH.

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R.K.Puram, New Delhi-110066.
Principal Bench, New Delhi.

Excise Appeal No.3970-71/06

[Arising out of Order-in-Appeal No.983-984/CE/CHD/06 dt.18.10.06 passed by the Commissioner(Appeals), Chandigarh)

For approval and signature:

Hon'ble Mr. RAKESH KUMAR, MEMBER TECHNICAL

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 would 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 Department Authorities:	:

CCE, Chandigarh — Appellant

Versus

M/s. Jain Steel Inds.
Shri Sanjay Jain — Respondent

Appearance

Sh. A.Rastogi, Authorised Departmental Representative(DR) For Appellant
Sh. Hemant Bajaj, Adv. for respondent

Coram: Hon'ble Mr. RAKESH KUMAR, MEMBER (TECHNICAL)

Date of decision: 21.7.08
Final Order No. 1113-1114/2008-SM(BR)

Per Rakesh Kumar:

These two appeals have been filed by the Revenue against order-in-appeal No.983-84/CE/CHD dt.18.10.06 passed by Commissioner(Appeals), Chandigarh. In this case, the jurisdictional Dy. Commissioner upholding the allegation of clandestine removal confirmed duty demand of Rs.83,420/- against the Respondent company and imposed penalty of equal amount on them under Section 11AC and also penalty of Rs.20,000/- on Shri Sanjay Jain, Executive of the Respondent company under Rule 26 of the Central Excise Rules. There is no dispute about the fact that prior to issuing show cause notice, the entire amount of duty along with 25% penalty had been paid. The Dy. Commissioner, however, still imposed penalty of equal to the duty demand confirmed. The Commissioner(Appeals) observing that in view of Tribunal's judgment in the case of Rashtriya Ispat Nigam Ltd. vs CCE reported in 2003(161)ELT.255, which has been upheld by the Hon'ble Supreme Court vide order reported as 2004(163)ELT A.53, no show cause notice was required to be issued for imposition of penalty, confirmed the duty demand and 25% of duty demand and penalty. But having done that, he further observed that the shortage of finished goods cannot be considered as clandestine removal unless supported by any corroborative evidence and ordered that hence no penalty is imposable on the company or the

Director/Partner. It is against this order of Commissioner(Appeals) that the Revenue have filed these appeals.

2. Heard both the sides.

2.1 Shri A.Rastogi, the learned Departmental Representative pleaded that this is a case of clandestine clearances without payment of duty, that payment of duty alongwith 25% of the duty amount towards penalty even prior to issue of show cause notice shows that this allegation has been accepted by the Respondents and that in view of these circumstances, penalty on Shri Jain the executive of the Respondent company is justified.

2.2 Shri Hemant Bajaj, Advocate, the learned Counsel for the Respondents pleaded that from mere shortage on the stock of finished goods, it is wrong to infer clandestine removal that shortage was due to high burning loss, that inspite of this the Respondents company had paid not only full duty on the goods found short but also 25% of the duty amount towards penalty and that in these circumstance neither there is any case for imposition of penalty equal to the duty allegedly evaded nor there is any justification for imposition of penalty on Shri Sanjay Jain, executive of the Respondent company.

3. In this case, the shortage of the finished goods – 24.676 M.T. of beams/joists has not been disputed and the Respondents even prior to issue of show cause notice deposited the entire amount of duty chargeable on the goods together with 25% of the duty towards penalty. The Asstt. Commissioner, however, besides confirming the duty

demand imposed penalty of Rs.84,420/- under Section 11AC on the Respondent company and penalty of 20,000/- on Shri Sanjay Jain, Executive of the Respondent company observing that they are guilty of deliberate evasion of duty. The Commissioner of Central Excise(Appeals)observing that "when duty on the shortage of finished products alongwith 25% penalty was deposited before the issue of the show cause notice, no further penalty is imposable, as held by the Tribunal in the case of Rashtriya Ispat Nigam Ltd. vs CCE(supra) and upheld by Hon'ble Supreme Court reported in 2004(163)ELT.A.53", held that order-in-original demanding interest and imposing further penalty on both the Appellants is set aside and the amount of duty and 25% penalty imposed is confirmed. He also set aside the penalty on Shri Sanjay Jain observing that shortage of finished goods in stock cannot be considered as clandestine removal unless supported by any other corroborative evidence and hence no penalty is imposable on the company and Director/partner. The Commissioner of Central Excise(Appeals)'s observation that no penalty is imposable on the company is contrary to his order confirming the duty demand and 25% of the duty amount as penalty. More so when no satisfactory explanation has been given by the Respondents for the shortage of the finished goods. Moreover Tribunal's judgment in the case of Machino Montell (I) Ltd. reported in 2004(62)DRLT.709 has been reversed by Hon'ble Punjab & Haryana High Court vide judgment reported in 2006(202)ELT.398(P&H). Therefore, while the impugned order confirming the duty demand and 25% of the duty towards penalty is upheld, the portion of the impugned order holding that no penalty is imposable on the company is not correct and the same is set aside. However, looking to the fact that there is no evidence of involvement of Shri Sanjay Jain, an executive of the Respondent company and he is only an employee of the company, the impugned order with regard to imposition of penalty on Shri Jain does not merit any interference.

4. The Commissioner of Central Excise(Appeals)'s order stands modified, as above.

Order dictated in the open Court.

(Rakesh Kumar)
Member Technical

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