(58)

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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/3209/2006-3211/2006-SM[BR]   Date 25/08/2008

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

1. M/S ROYAL ALUMINIUM CO PVT LTD
2. SHRI N.K. AGARWAL, DIRECTOR
3. SHRI AJAY AGGARWAL ,DIRECTOR
3000/2 BHAGAT SINGH STREET,CHUNA
MANDI,PAHARGANJ,N. DELHI.

M/S ROYAL ALUMINIUM CO PVT LTD   Appellant
Vs
C.C.E.ROHTAK   Respondent

am directed to transmit herewith a certified copy of **Final order No**. 1168 – 1170 /2008 –SM[BR] dated 15.7.2008

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.ROHTAK
   17-P,SECTOR-I,ROHTAK.
2. Adv. / Consult
   MR.BHASIN SETHI & ASSICIATE
   401,SATYAM CINEMA BUILDING,RANJEET NAGAR,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. Easy Service Tax Online Dot Com Pvt. Ltd. 407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad - 15
15. Office Copy
16. Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH NEW DELHI

Excise Appeals Nos.3209-3211/06-SM (BR)

[Arising out of common Order-in-Appeal No.26-28/GRM/RTK/2006 dated 25.01.2006 passed by the Commissioner of Central Excise (Appeals), Gurgaon]

Date of Hearing/ Decision:15.07.2008

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? :

1. M/s. Royal Aluminium Co. Pvt. Ltd.
2. Shri N.K. Agarwal, Director
3. Shri Ajay Aggarwal, Director ...Appellants

[Rep. by Shri V.R. Sethi, Advocate]

Vs.

CCE, Rohtak ...Respondent

[Rep. by Shri A.K. Rastogi, DR]

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

Final Order No.1168-1170/2008-SM(BR) Dated:15.07.2008

<u>Per P.K. Das</u>:

All these appeals are arising out of a common order and, therefore, all are being taken up together for disposal.

2. The relevant facts of the case, in brief, are that the Appellants are engaged in the manufacture of Aluminum Bars, Section, Rods, classifiable under sub-heading No.7604.10, 7604.21, 7604.29 etc. On 14.09.2001, the Central Excise Officers visited the Appellants' factory and detected and seized the excess quantity of raw materials and finished goods valued Rs.7,48,500/- and Rs.2,56,200 respectively. The Central Excise officers recorded the statement of Shri Ajay Kumar Agarwal and Shri N.K. Agarwal, both Directors. Subsequently, the Appellants produced the records. A show cause notice was issued proposing to confiscate the seized goods and to impose penalty on the Appellants. By Adjudication Order, the Adjudicating Authority confiscated the seized goods and imposed redemption fine of Rs.2,00,000/- and penalty of Rs.1,60,000/- on the Appellant Company and penalty of Rs.25,000/- each of the Directors viz. Appellant No.2 and 3 herein. The Commissioner (Appeals) upheld the Adjudication Order.

3. Ld. Advocate on behalf of the Appellants submits that confiscation of the raw materials is not justified. He relied upon the decisions of the Tribunal as under:-

(a) Mohindra Enterprises Vs. CCE, Jalandhar
2007 (80) RLT 634 (CESTAT-Delhi)

(b) Hira Steels Ltd. Vs. CCE, Raipur-I
2006 (206) ELT 783 (Tribunal-Delhi)

(c) Unimark Remedies Ltd. Vs. CCE, Vapi
2006 (204) ELT 49 (Tribunal-Mumbai)

(d) Luminous Electronics Ltd. Vs. CCE, Delhi-II
2006 (202) ELT 461 (Tribunal-Delhi)

(e) Paramount Rolling Mills Vs. CCE, Surat
2005 (192) ELT 666 (Tribunal-Mumbai)

He further submits that the Appellants subsequently produced the records and there was no excess materials and, therefore, confiscation of the seized goods is not sustainable. He also submits that the charges are non-maintenance of record properly in contravention of Rule 10 (2) of the Central Excise Rules, 2001 and, therefore, imposition of redemption fine and penalty are excessive.

4. Ld. DR reiterates the findings of the Commissioner (Appeals). He submits that the Appellants failed to produce the records at the time of visit of central excise officers. He further submits that the Appellants manipulated the records and imposition of penalty and redemption fine are justified.

5. After hearing both the sides and on perusal of the records, the charges were levelled against the Appellants in the show cause notice that the RG-23 A Part-I Register was not properly maintained as all the columns were not filled-in properly and some new columns were added for production of finished goods, dispatch and balance quantity of finished goods. The Commissioner (Appeals) observed that the seized goods are liable to be confiscated for contravention of Rule 10 (2) of the Central Excise Rules, 2001 as the Appellant Company failed to maintain

the proper accounts of finished goods as well as raw materials. Rule 10 of the said Rules provides maintenance of daily stock accounts. Sub-rule (2) of Rule 10 provides that first page and the last page of each such Accounts Book shall be duly authenticated by the purchaser or by the manufacturer or by his agent. The Tribunal consistently observed in series of decisions as referred by the ld. Advocate that the raw materials were received by the assessee after due discharge of duty, therefore, this cannot come under the category of excisable goods. It has further been held that the assessee is neither a producer nor registered person or a registered dealer but merely user of raw material, which cannot be called excisable goods in terms of definition contained in Section 2 (d) of Central Excise Act, 1944. It has been held that non-accounted inputs found in excess cannot be confiscated under Rule 173Q of the erstwhile Central Excise Rules, 1944. In view of the decisions of the Tribunal, I find that confiscation of the raw materials is not justified, but penalty is imposable.

6. Regarding confiscation of the finished goods, it is admitted position that the Appellant did not maintain the daily stock accounts properly and, therefore, finished goods are liable to be confiscated. The Tribunal in the case of PNP Castings (P) Ltd. Vs. CCE, Lucknow - 2006 (194) ELT 250 (T-D) held that excisable goods were not accounted for in the statutory records in terms of Rule 10 of the Rules liable to confiscation. In the present case, I find that the Appellants failed to give

any proper reasons for excess of the finished goods and the confiscation is justified. However, I agree with the submission of the ld. Advocate that the amount of redemption fine and penalty is excessive.

7. In view of the above discussions, confiscation of raw materials is set aside. Redemption fine and penalty are reduced to Rs.35,000/- and penalty to Rs.50,000/-. Regarding imposition of penalty on the two Directors, the Commissioner (Appeals) observed that the Directors were actively involved to circumvent the evasion of duty. I find that there is no demand of duty in the present case and, therefore, imposition of penalty on the Directors are not sustainable. Accordingly, penalty on the Appellants No.2 and 3 is set aside.

Order dictated & pronounced in open court on 15.07.2008.

(P.K. Das)
Member (Judicial)

Ckp.