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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/2131/2006-SM[BR]   Date 29/08/2008

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

To :
M/S SWADESHI ALUMINIUM CO P LTD.
VILL JATOLA,TEH KHARKHODA,DISTT SONEPAT
(HR)

M/S SWADESHI ALUMINIUM CO P LTD.   Appellant

Vs

CCE,ROHTAK   Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1212 / 2008 –SM[BR] dated 1.7.2008

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

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
   CCE,ROHTAK
   ROHTAK HARYANA
2. Adv. / Consult
   MR. R.C.CHOUDHARY ADV.
   H.NO.1610, SECTOR4, GURGAN. 12200[HARYANA]
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)

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

E/Appeal No.2131/06-SM

(Arising out of order in appeal No.98/GRM/RTK/06 dated 23.3.06 passed by the Commissioner of Central Excise (Appeals), Rohtak)

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 Swadeshi Aluminium Co (P) Ltd — Appellant
(Rep. by Shri R.C. Choudhary)

Vs

CCE, Rohtak — Respondent
(Rep. by Shri A.K. Rastogi, DR)

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

Date of Hearing: 1.7.08

Final Order No. 1212 /2008-SM(BR)

Per P.K. Das:

The relevant facts as on record, in brief, are that the appellants are engaged in the manufacture of Aluminium Sections and Billets classifiable under Heading 76.01, 76.02 and 76.04 of the Schedule to the Central Excise

Tariff Act, 1985. On 26th July, 2004, the Central Excise officers visited their factory and during stock verification, ascertained shortage of raw materials involving Central Excise duty of Rs.36,822/- and Education Cess of Rs. 736/-. On scrutiny of the record, it was found that the appellants had cleared iron scrap by-product of imported aluminium scrap on payment of duty under transaction value. At the instance of the Central Excise officers, the appellants reversed the credit of imported aluminium scrap of Rs. 29,929/- and Education Cess of Rs. 459/-. They have also reversed the duty on the shortage. The Adjudicating Authority confirmed the demand of duty of Rs.67,946/- and appropriated the said amount as deposited by the appellants before issue of show cause notice. He also imposed penalty of equal amount under Rule 25 of Central Excise Rules, 2002, Rule 13(2) of Cenvat Credit Rules read with Section 11AC of the Central Excise Act, 1944 which has been upheld by the Commissioner (Appeals).

2. After hearing both the sides and on perusal of the record, I find that the shortage of raw material was detected ~~deducted~~ during stock verification. The Authorized Signatory of the appellants in his statement stated that after receiving the scrap, it is issued to the production area, that they put the scrap in the furnace without any weighment and that may the reason for shortage. Regarding the demand of duty on clearance of iron scrap the learned Advocate submits that the appellants cleared the iron scrap on payment of duty under transaction value. There is no suppression of facts with intent to evade payment of duty. There is no material placed by the Revenue that the appellants cleared the goods clandestinely. So, the imposition of penalty

under Section 11AC of the Central Excise Act, 1944 read with Rules is not justified. Accordingly, the penalty imposed on the appellants is set aside.

(Order dictated and pronounced in the open Court).

(P.K. Das)
Member(Judicial)

MPS*