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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/3954/2006-SM[BR]   Date 03/09/2008

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

To :
C.C.E.JAIPUR I

NCRB, STATUE CIRCLE, C-SCHEME, JAIPUR.

C.C.E.JAIPUR I   Appellant

Vs

M/S SHARMA STEEL ROLLING MILL   Respondent

I am directed to transmit herewith a certified copy of **Final order No 1240 / 2008 –SM[BR]** dated 4.8.2008

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

Assistant Registrar

(SM Appeal Branch)

Copy to :

1. Respondent

   M/S SHARMA STEEL ROLLING MILL

   127, INDUSTRIAL AREA, JHOTWARA, JAIPUR(RAJASTHAN)
2. Adv. / Consult

   NONE;-------------

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 Appeal No.3954 of 2006-SM (BR)

[Arising out of Order-in-Appeal No.239(GRM)CE/JPR-1/2006 dated 29.09.2006 passed by the Commissioner of Central Excise (Appeals), Jaipur]

Date of Hearing/ Decision:04.08.2008

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? :

CCE, Jaipur-I ...Appellants
(Rep. by Shri A.K. Rastogi, DR)

Vs.

M/s. Sharma Steel Rolling Mills ...Respondent
[Rep. by None.]

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

Final Order No. 1240/08-SM(BR)/Dated:04.08.2008

Per P.K. Das:

Heard the ld. DR on behalf of the Revenue. None appeared on behalf of the Respondent despite issue of notice.

2. The relevant facts of the case, in brief, are that the Respondents are engaged in the manufacture of M.S. Ingots and Angles classifiable under Chapter 72 of the Schedule to the Central Excise Tariff Act, 1985. On 17.02.2005, the Central Excise Officers visited the Respondents' factory and conducted stock verification. The said officers found shortage of inputs viz. scrap. The Respondents debited the amount of Rs.79,314.00 in PLA on 17.02.2005. A show cause notice was issued proposing demand of duty of Rs.1,50,760.00 in respect of scrap found short and alleged that the said quantity was used in the manufacture of finished goods, M.S. Angles and cleared clandestinely. The Adjudicating Authority confirmed the demand of duty of Rs.1,50,760.00 and imposed penalty of equal amount under Section 11 AC of the Act of Central Excise Act, 1944 along with interest. The Commissioner (Appeals) modified the Adjudication Order in so far as demand of Rs.71,442/- was set aside and penalty was reduced to equal amount of duty from Rs.1,50,760/- to Rs.79,318/-.

3. Ld DR contended that the Respondent failed to give proper reason for shortage of the inputs and, therefore, the Adjudicating Authority rightly converted the inputs into finished goods and demanded the duty. The Commissioner (Appeals) observed that the allegation of manufacture of M.S. Angels from the shortage of scrap by the Adjudicating Authority is only an assumption. It has been held by the Commissioner (Appeals)

that the Department failed to produce any evidence that the said quantity was used in the manufacture of finished goods and cleared the same clandestinely. I agree with the findings of the Commissioner (Appeals). It is noted that the Revenue failed to produce any evidence that the shortage of inputs were used in the manufacture of finished goods and removed clandestinely. So, I do not find any merit in the appeal of the Revenue. Accordingly, the appeal filed by the Revenue is rejected.

Order dictated & pronounced in open court on 4.8.2008.

(P.K. Das)
Member (Judicial)

Ckp.