TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
SINGLE MEMBER APPEAL BRANCH

Date 03/09/2008

Appeal No. E/3286/2006-SM[BR]

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

To :
M/S RAJASTHAN IND.GASES LTD
SB-188,UDYOG VIHAR,JAITPURA,JAIPUR.

M/S RAJASTHAN IND.GASES LTD — Appellant
Vs
C.C.E.JAIPUR — Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1251 / 2008 –SM[BR]dated 24.7.2008 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.JAIPUR
   NCRB,STATUE CIRCLE,C-SCHEME,JAIPUR.
2. Adv. / Consult SHRI BIPIN GARG ADV.
   B-1 /1289 –A, VASANT KUNJ NEW DELHI 110070

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.3286 of 2006-SM (BR)

[Arising out of Order-in-Appeal No.184-185CE/JPR-I/2006 dated 01.06.2006 passed by the Commissioner of Central Excise (Appeals), Jaipur]

Date of Hearing/ Decision:24.07.2008

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? : NA
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. Rajasthan Ind. Gases Ltd. ...Appellants
[Rep. by Shri A. Gupta, Advocate]

Vs.

CCE, Jaipur ...Respondent
[Rep. by Shri A.K. Rastogi, DR]

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

Final Order No..1251/08-SM (BR)/Dated:24.07.2008

Per P.K. Das:

The relevant facts of the case, in brief, are that the Appellants are engaged in the manufacture of M.S. Ingots classifiable under sub-heading No.7206.10 of the Schedule to the Central Excise Tariff Act,

1985. On 29.09.2005, the Central Excise Officers visited the Appellants' factory and conducted stock verification. The said officers ascertained excess stock of 94.78 M.T.s of ingots than the balance in the RG-1 Register, which was seized by the Central Excise Officers. The Adjudicating Authority confiscated the seized goods and imposed redemption fine of Rs.50,000/- and penalty of Rs.40,000/-. The Commissioner (Appeals) upheld the Adjudication Order.

2. Ld. Counsel on behalf of the Appellants submits that the Commissioner (Appeals) observed that there is no evidence on record to prove that there was any intention of the Appellants to remove the said goods clandestinely. He further submits that the Director of the Appellant-Company in his statement on the spot stated that 40.32 M.T.s of M.S. Ingots were produced on 28.09.2005. In support of his contention, he drew the attention of the Bench to the raw material register, wherein it was mentioned that 44.800 M.T.s was issued on 28.09.2005. He further submits that, in the facts and circumstances of the case, imposition of redemption fine and penalty are not justified. Ld. Counsel relied upon the decision of the Hon'ble Madhya Pradesh High Court in the case of Supreme Industries Ltd. Vs. CESTAT, New Delhi reported in 2007 (214) ELT 187 (MP).

3. Ld. DR reiterates the findings of the Commissioner (Appeals). He submits that admittedly, unaccounted materials were found during stock

verification. He further submits that there is a contravention of Rules and, therefore, the Adjudicating Authority rightly imposed minimum fine and penalty. He relied upon the Tribunal's decision in the case PNP Castings Ltd. Vs. CCE, Lucknow – 2006 (194) ELT 250 (T-D).

4. After hearing both the sides and on perusal of the records, it is seen from the Adjudication Order that the Director of the Appellant-Company in his statement, on the spot, stated that the stock of 40.32 M.T.s of M.S. Ingots produced on 28.09.2005 has not been recorded in the daily stock register as the concerned Accountant, who was to make entries in the Register, was on leave. He further submits that remaining quantity has not been entered in the records due to wrong reporting of production by the labour. The Adjudicating Authority observed that the Appellants could not produce any documentary evidence viz daily production report or Heat Wise Log Sheet to show that 40.32 M.T. of M.S. Ingots were the production of 28.09.2005.

5. The Commissioner (Appeals) observed that there was no intention of the Appellant to remove the goods clandestinely. So, it is a case of non-accountal of the goods and the Appellant failed to give proper reason of non-accountal for balance quantity of the goods. The Commissioner (Appeals) upheld the confiscation of goods following the decision of the Hon'ble Bombay High court in the case of Kirloskar Brothers Ltd. Vs. Union of India reported in 1988 (34) ELT 30 (Bombay). I find that the

Hon'ble Madhya Pradesh High Court in the case of Supreme Industries Ltd. (supra) discussed the decision of the Bombay High Court in the case of Kirloskar Brothers Ltd. (supra) and held as under:-

> "In the present case, neither intention to evade duty is established nor is there any material to establish the same and on the contrary the explanation of the petitioners and the fact that the material was not subjected to quality control test has been totally ignored. Merely because in the statement, the Commercial Manager of the petitioners has stated that the goods were manufactured that by itself cannot be a ground for holding that the goods were ready for despatch to the customer. The learned Tribunal incorrectly applied the principles laid down by the Bombay High Court in the case of Kirloskar Brothers Vs. Union of India [1988 (34) E.L.T. 30 (Bombay) = 2002 (83) ECC 497 (Bombay)] as the facts of that case and the present case are entirely different. In the case of Kirloskar Brothers (supra) intention to remove the air conditioners, and in fact, the removal of air conditioners were established."

6. In my view, when the Commissioner (Appeals) had come to a conclusion that there was no evidence on record to prove that there was any intention of the Appellant to remove the said goods clandestinely. The case of Kirloskar Brothers Ltd. (supra) would not apply. It is noted that the Appellant had given explanation for non-accountal of goods. Taking into overall facts and circumstances of the case and the

observation of Commissioner (Appeals), the impugned order is not maintainable. The appeal is allowed with consequential relief.

Order dictated & pronounced in open court on 24.07.2008.

(P.K. Das)
Member (Judicial)

Ckp.