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

Appeal No. E/456 /2007 – SM[BR] Date 13/01/2009

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

To :
M/S KRISHNA & COMPANY
B-483, INDL. AREA, BHIWADI

M/S KRISHNA & COMPANY Appellant
Vs
C.C.E. JAIPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 44/ 2009 - **SM[BR]** dated 9.1.2009 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
MR.R. SANTHANAM
C-3/210, JANAK PURI, NEW DELHI - 110 058.
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 - 3
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
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-1
15 Office Copy
16 Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. IV
Excise Appeal No. 456 of 2007 (SM)

[Arising out of the Order-in-Appeal No. 286 (GRM)/CE/JPR-I/2006 dated 29/11/2006 passed by The Commissioner of Central Excise (Appeals), Jaipur.]

For Approval and signature :
Hon'ble Shri 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? :

M/s Krishna & Company — Appellant

Versus

CCE, Jaipur — Respondent

Appearance

Shri R. Santhanam, Advocate – for the appellant.

Shri S. Gautam, Authorized Representative (DR) – for the respondent.

CORAM : **Hon'ble Shri Rakesh Kumar, Member (Technical)**

DATE OF HEARING : 11/12/2008.
DATE OF DECISION : 09-01-2009.

Final Order No. 44/09-SM(BR) Dated : 9-1-09

Per. Rakesh Kumar :-

The Appellant are manufacture of M.S. Ingots falling under Chapter 72 of the Central Excise Tariff. Their unit during the period from August 1997 to 31/03/2000 was working under compounded levy scheme under Section 3 of the Central Excise Act and since during the compounded levy period, they were required to discharge monthly duty liability based on their production capacity, as determined by the Commissioner, they were not eligible for Cenvat credit. The compounded levy scheme was withdrawn w.e.f. 01/4/2000 and with the withdrawal of this scheme they became eligible for input duty credit. The Central Government issued a Notification No. 29/2000-CE dated 31/03/2000 prescribing deemed credit @ 12% ad voleram on the value of the stock of raw material as on 01/04/2000. This deemed credit was to be taken only upto 30th April 2000 as, as per Clause '6' of the notification, this notification came into force from 01/04/2000 and shall remain effective upto ~~an~~ and inclusive of 30th day of April 2000. The appellant vide their letter dated 01/04/2000 addressed to Assistant Commissioner declared stock of 583.865 M.T. of scrap. The Appellant vide their letter dated 14/07/2000 addressed to the Jurisdictional Deputy Commissioner mentioned that during the period from August 1997 to December 1997, when excise duty payment was on compounded basis, the unit had purchased 683.86 M.T. of duty paid raw material. They also enclosed the invoices and requested the Deputy Commissioner to depute a central excise officer to their factory for verification of the stock of raw material and permitting them the deemed Modvat credit. Here it may also mentioned that the appellant's unit was closed due to disconnection of the electric power on account of dispute with electricity board since December 1998. The stock of raw material was verified by the Departmental officers on 17/05/2000 and prior to this, the Appellant had been informed about the date of the stock verification. The stock verification was conducted under Panchnama and according to the Revenue, the stock found on verification was only about 70 M.T. and that too consisted of old and used articles and not manufacturing scrap. On 17/05/2000 statement of Shri Jagdish Sirwaha, the Authorised Signatory of the Appellant company was recorded, wherein he accepted that on physical verification, the raw material found was only around 70 M.T. and that the stock of scrap found comprises of old and used articles/items of iron steel. The Appellant, however, challenged the stock verification and informed that Shri Jagdish Sirwaha was only a caretaker and was not authorized ~~and~~ to deal with any excise matter. The Directors of the Appellant company were summoned several times by the Central Excise officers but they did not turn up. It is in this background that a show cause notice was issued on 12/03/05 for demand of wrongly taken deemed Cenvat credit amounting to Rs. 4,21,114/- under Rule 57 I (1)(ii) read with Sec. 11 A of the Central Excise Rules alongwith interest on it at the applicable rate as per the provisions of Rule 57 I (5) read with Section 11 AB of the Central Excise Act and also for imposition of penalty on the Appellant under Rule 57 I (4) of Central Excise Rules readwith Section 11 AC of the Central Excise Act. The show cause notice had been issued by invoking extended period of five years. The Deputy Commissioner vide order-in-original dated 23/11/05 confirmed the Cenvat credit demand of Rs. 4,21,114/- alongwith interest and beside this, imposed penalty of equal amount on the Appellant under Rule 57 I (4) readwith Section 11 AC of the Central Excise Act. The Commissioner (Appeals) vide order-in-appeal dated 31/03/06 dismissed their appeal for non-compliance to the provisions of Section 35F of the Central Excise Act as the Appellant had not deposited the amount of Cenvat credit demand confirmed and penalty imposed. On appeal to the Tribunal, the Tribunal vide order-in-appeal dated 27/07/06 directed the

Appellant to deposit an amount of Rs. 2,00,000/- and remanded the matter to the Commissioner (Appeal) for deciding the matter on merit. The Commissioner (Appeal) in denovo proceedings passed the impugned order dated 29/11/06 by which the Deputy Commissioner's order was upheld and the appeal was rejected. It is against this order that the present appeal has been filed.

2. Heard both the sides.

2.1 Shri R. Santhanam, Advocate, the learned Counsel appearing for the Appellant pleaded that the stock taking was done in absence of the Appellant's authorized representative and it has not been explained as to on what basis, the Departmental officers determined the stock to be only 70 M.T. as against the stock of 683 M.T. declared, that the Revenue Departmental officer did not accept the Appellant's request for re-verification of the stock and instead of this, kept on summoning their Directors, that Indian Overseas Bank, from whom the Appellant had taken loan, had initiated debt recovery proceedings against the Appellant before the Debt Recovery Tribunal and as per the report of the Commissioner appointed by the Debt Recovery Tribunal for taking stock of the appellant's assets, the Commissioner in his report to the Debit Recovery Tribunal has reported the stock of approximately 600 M.T. of iron scrap lying in the factory and that in view of this, the Department's claim that their stock of scrap as on 01/04/2000 was only 70 M.T. cannot be correct. He also pleaded that the Cenvat credit demand raised by show cause notice dated 12/03/05 is time barred as there was no suppression on the part of the Appellant. In view of this, he pleaded that the deemed Cenvat credit on the quantity of 610 M.T. should be allowed and impugned order be set aside.

2.2 The learned Departmental Representative pleaded that at the time of stock verification on 14/05/2000, the stock of scrap found was only about 70 M.T. and that too consisted of old and used iron steel articles purchased from scrap dealers which was non duty paid scrap, that in subsequent proceedings, the Appellant have not cooperated with the Department for verification of their claim that the verification report of the local Commissioner appointed by the Debt Recovery Tribunal mentioning stock of 610 M.T. of scrap in July 2001 is of no relevance and that in view of the conduct of the Appellant, the longer limitation period of five years has been rightly invoked.

3. I have carefully considered the submissions from both the sides and perused the records. The point of dispute in this case is as to whether as on 01/04/2000, the Appellant had 683 M.T. of duty paid manufacturing scrap or whether at that time they had

only 70 M.T. of scrap comprising of old and used iron and steel articles purchased from scrap dealers. The difference between the stock claimed by the Appellant – 683 M.T. and the stock actually found by the officers is huge and this much difference is not possible even after taking into consideration 100% margin of error. It is also seen that as per the verification Panchnama dated 14/07/2000, the scrap found was not duty paid manufacturing scrap but the same comprised of old and used iron and steel articles like cooler bodies etc. purchased from scrap dealers which obviously is non duty paid scrap. The Appellant, in subsequent proceedings, have not cooperated with Department. Though the Appellant had informed the Jurisdictional Superintendent that one Shri Shamsher Singh would appear before the Superintendent for verification of the stock on 26/09/02 but neither he appeared on 26/09/02 and nor he appeared on the next day on 27/09/02. The verification report of the Commissioner appointed by the Debt Recovery Tribunal, which mentions the stock of 600 M.T. as on 21/07/01 is of no relevance as for the purpose of deemed credit, what was relevant was the stock of duty paid scrap as on 01/04/2000 and as mentioned above in course of stock taking on 14/05/2000, the quantity of scrap found was only about 70 M.T. and that too of the type which does not arise in course of manufacture, as the same comprised of old and used article purchased from scrap dealers. Shri Jagdish Sirwaha in his statement dated 14/05/2000, in whose presence the stock verification has been conducted, has also confirmed that the quantity of the scrap found was only about 70 M.T. and the same was not duty paid scrap as the same comprised of old and used iron and steel articles purchased from scrap dealers.

4. In view of these circumstances, I am of the view that the deemed Cenvat credit has been rightly denied to the Appellant. As regard their plea of the demand being time barred, I find that from the circumstances of the case, it is clear that they had made a false claim regarding the quantity and the nature of the scrap available in their stock as on 01/04/2000 and when on verification, the stock was found to be only 70 M.T. and that too of non duty paid scrap comprising of old and used articles, they refused to cooperate with the Department. In view of this, the extended period under Rule 57 I(3) has been rightly invoked.

5. In view of the above, I find no infirmity in the impugned order. The appeal is dismissed.

(Pronounced in open court on 9/1/09.

(Rakesh Kumar)
Member (Technical)

PK