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

Appeal No. E/5202/2004-5203/2004 - EX[DB] Date 22/01/2009

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

To :
C.C.E. MEERUT-I
UNIVERSITY ROAD, MANGAL PANDEY NAGAR,
MEERUT-I-
C.C.E. MEERUT-I Appellant
Vs
M/S SHAMLI STEEL PVT. LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 54-55/2009- **EX[DB]** dated 15-1-09 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
M/S SHAMLI STEEL PVT. LTD.
VILL. KANDELA, PANIPAT SHAMLI ROAD, SHAMLI, DISTT. MUZAFAFRNAGAR
2. Adv. / Consult
MR.RAJESH CHHIBBER
FA/9, NEW KAVI NAGAR, GHAZIABAD
3 S.D.R
~~4 J.CDR~~
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-15
15 Office Copy
16 Guard file

Assistant Registrar
(Excise Appeal Branch)

~~M/S SHAMLI STEEL PVT. LTD.~~
~~VILL. KANDELA, PANIPAT, SHAMLI ROAD, SHAMLI, DISTT.~~
~~MUZAFFARNAGAR~~

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

COURT NO. II

Excise Appeal No. 5202-5203 of 2004-Ex.

(Arising out of Order-in-Appeal No. 476-77/MRT-I/2004 dated 26.7.04 passed by the Commissioner (Appeals), Central Excise, Meerut-I)

CCE, Meerut-I — Appellant

Vs.

M/s Shamli Steel Pvt. Ltd. — Respondent

Appeared for Appellant : Shri Amit Jain, DR
Appeared for Respondent : Shri Rajesh Chhibber, Advocate

Date of Hearing: 5.1.2009

CORAM: HON'BLE MR. D.N. PANDA, JUDICIAL MEMBER
HON'BLE MR. RAKESH KUMAR, TECHNICAL MEMBER

FINAL Order No. 54-55/09-EX dated............

Per D.N. Panda:

Both the appeals of Revenue has grievance that the ld. appellate authority should not have granted relief to the respondent holding that alloy steel was manufactured on 31.3.2000 and same goods were equally manufactured thereafter. Ld. DR for Revenue argues that there were enough evidence on record viz. statement dated 15.11.2000 recorded from Shri Dharam Chand Batra who is authorised representative of the buyer of the goods of the appellant and the technical opinion dated 29.11.2000 of Shri Rakesh Ahluwalia, Vice President of M/s U.P. Steels, Muzaffarnagar suggesting that the inputs mentioned by the appellant in their declaration dated 1.4.2000 were not capable of manufacturing alloy steel ingots. Those were brushed aside by the ld. Commissioner (Appeals). Also the ld. appellate authority below did not conceive that the input of the appellant on 31.3.2000 was not capable of producing alloy steel. Also he pleaded that there was no evidence brought out by the respondent to prove that they manufactured alloy steel.

2. Ld. counsel for the appellant submits that there is no inconsistency in the findings Recorded by ld. appellate authority who allowed the appeal of the appellant and granted relief for very valid reason Stated by him. He had evaluated the whole process of manufacture and considered the issue in detail in page 5 and 6 of the appellate order as to the facts and circumstances of the case proving stand of the appellant. Therefore, that order is sustainable.

3. Heard both sides and perused the record.

4. We noticed that licence was issued to the appellant for manufacture of alloy steel w.e.f. 13.3.2000. But actual production commenced on 31.3.2000. On

16.5.2000, registration certificate of the appellant was amended to incorporate M.S. ingots therein. The department also drew sample on 3.4.2000 from the goods manufactured by the appellant. That sample proved the goods to be alloy steel and conclusion was drawn on the basis of chemical examiner's certificate. Representative of M/s J.R.M. Steels Pvt. Ltd. which was a buyer of the product of the appellant was subject to cross-examination on 4.12.02 and that revealed that such buyer was recipient of M.S. ingots and other ingots from the appellant. Also we have noticed from record that Shri Rakesh Ahulwalia, Vice President of M/s U.P. Steel and whose statement was recorded on 30.9.2000 was not a technical person. We further find that when the technical examination in respect of samples drawn on 3.4.2000 was done, report of this examination remained uncontroverted. Department did not obtain any sample of the goods manufactured on 31.3.2000. There was also no effort made to find out who were the buyers of the goods manufactured on 31.3.2000. However, ld. DR submits that when summons were issued to the buyers those were returned. There is no cogent evidence to suggest that on

31.3.2000 the appellant has manufactured the questionable goods that is M.S. ingots.

5. We also observe that the Compounded Levy Scheme was discontinued from 1.4.2000. Therefore, what that was disputed is one day's manufactured goods. However, the moot question is whether the respondent was entitled to avail Cenvat credit on the inputs. There is no charge for denial of Cenvat credits. Therefore, the ld. Commissioner in page 6 of the impugned order found that the denial of Cenvat credit is unsustainable.

6. In view of aforesaid observation, we are unable to appreciate that Revenue has brought any cogent evidence to succeed. Accordingly, we have no other option than to say that both the appeals of the Revenue fails.

(Dictated & pronounced in open Court)

(D.N. PANDA)
JUDICIAL MEMBER

(RAKESH KUMAR)
TECHNICAL MEMBER

RM