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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/1346/2000 – SM[BR] Date 16/01/2009

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

To :
SIDDHARTH TUBES LTD.
3RD FLOOR, 15 -16 , JAWAHAR MARG OLD IDA BUILDING
INDORE [M.P]
SIDDHARTH TUBES LTD. Appellant

Vs

C.C.E. INDORE Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 65 / 2009 - **SM[BR]** dated 13.1.2009 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. INDORE

MANIK BAGH PALACE, POST BOX NO. 10, INDORE 452001 (M.P.)

2. Adv. / Consult SHRI BIPIN GARG ADV.
B-1/1289-A, VASANT KUNJ NEW DELHI -70.

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
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Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

COURT NO. II

Excise Appeal No. 1346 of 2000-SM

(Arising out of Order-in-Appeal No. 114-CE/BPL/2000 dated 25.1.2000 passed by Dy. Commissioner, Central Excise, Bhopal)

M/s Sidharth Tubes Ltd. Appellant

Vs.

CCE, Indore Respondent

Appeared for Appellant: Sh. Bipin Garg, Advocate & Sh. V.S. Mishra, Advocate

Appeared for Respondent: Shri R.K. Verma, DR

Date of Hearing: 9.1.2009

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

Final Order No. 65/09-SM(BR) dated 13.1.09

Per D.N. Panda:

Ld. counsel Shri Bipin Garg submits that the impugned order is against two allegations. The first allegation is excess of MS pipes of 26 MT found in the premises of the appellant and the second allegation is shortage of 44.083 MT of M.S. galvanised pipes which are bought out items. He pleads that the shortage was in relation to goods not manufactured since those are bought out items for which there is no duty liability. But so far as excess of goods is concerned, he pleads that this excess was found by the authority on misconstruction of Bureau of Indian Standard specification to calculate the physical stock position. Investigation in this case was made on 29.1.95. Learned Counsel submits that shortage was absolutely not there when the tolerance limit permitted by Bureau of Indian Standard was adhered for the final products. He says that the appellant has satisfied the Bureau of Indian Standard specification. But calculation made by authorities was erroneous to make out a case by their own formula. If reconciliation is made the Appellant shall succeed. Therefore, his prayer is that the appeal may be allowed on both the counts granting immunity from penal consequence of law.

2. Ld. DR submits that there is nothing erratic formula adopted for calculation of excess stock of 26 MT M.S. pipes. There was no evidence produced in respect of bought out items to prove the stand of the Appellant that there is no manufacture of MS galvanised pipes. He submits that the authorities below have extensively examined the matter and laid down the basis of calculation in the show-cause notice itself followed by a detailed order-in-original. Therefore, the excess calculation was in order and nothing challengeable. Therefore on both counts the appellant should fail. Ld. DR relies on the decision of Tribunal in the case of **CCE Vs. Hi-Tech. Pipes Ltd.** reported in 1996 (88) ELT 302.

3. Heard both sides and perused the record.

E/1346/2000-SM

4. So far as the shortage of M.S. galvanised pipes is concerned, the ld Commissioner has not contradicted that the same related to bought out items. Once such aspect is clear, manufacturing of M.S. galvanised pipes is ruled out. The appellant should succeed in respect of demand on these goods.

5. So far as the excess stock of M.S. pipes is concerned while both the parties have rivalry submissions, the appellant has failed to satisfy that calculation is based on Bureau of Indian Standard and demonstrated by a chart. That has not been done. No issue can therefore be made out by Appellant. The appellant should fail on this count of appeal.

6. So far as the redemption fine is concerned, this appears to be disproportionate since according to the ld. Counsel, the duty liability is Rs.61,601/-. If the duty liability has been borne on clearance of the goods, the appellant should not face the disproportionate redemption fine of Rs.60,000/-. Accordingly that is reduced to Rs.10,000/-.

7. So far as imposition of penalty is concerned, the dispute being only on the calculation aspect on the basis of Bureau of Indian Standard specification, that is also reduced to Rs.10,000/-.

8. In the result, the appeal is partly allowed in the above terms.

(Dictated & pronounced in open Court)

(D.N. PANDA)
JUDICIAL MEMBER

RM