

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/434 & 474 / 2007 -SM [BR]

Date 11/02/2009

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

To :
(1-2) M/S OPEL ALLOYS (PVT.) LTD.

9TH MILE STONE, G.T. ROAD, CHHAPRAULA,
GAUTAM BUDH NAGAR
M/S OPEL ALLOYS (PVT.) LTD.

Appellant

Vs
Respondent

C.C.E. GHAZIABAD

SM[BR] dated 6.2.2009

I am directed to transmit herewith a certified copy of Final order No. 153 - 154 /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. GHAZIABAD

CGO COMPLEX-II, KAMLA NEHRU NAGAR GHAZIABAD
201002

2. Adv. / Consult

MR.C.HARISHANKAR

46, BANK ENCLAVE, DELHI-110092

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 Publications (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

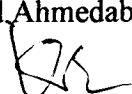
12 Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagarava Road, T. Nagar, Chennai

13 Taxindiaonline.com Pvt.Ltd, B-XI/8183, Vasant Kuni, 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)

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH – COURT NO. 1

Excise Appeal Nos. 434 & 474 of 2007-SM

(Arising out of Order-in-Appeal No. 198-CE/GHZ/2005 dated 28.11.2006 passed by the Commissioner of Customs & Central Excise (Appeals), Ghaziabad).

DATE OF HEARING : 05.02.2009

DATE OF DECISION : 05.02.2009

FOR APPROVAL AND SIGNATURE :

HON'BLE MS. JYOTI BALASUNDARAM, VICE-PRESIDENT

1.	Whether Press Reporters may be allowed to see the order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982 ?.	No
2.	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not ?	No
3.	Whether their Lordships wish to see the fair copy of the Order ?	Seen
4.	Whether Order is to be circulated to the Departmental Authorities?	yes

M/s Opel Alloys (Pvt.) Ltd.

...

Appellant

(Rep by Sh. S. Sunil, Adv.)

versus

CCE, Ghaziabad

...

Respondent

(Rep. by Sh. R.K. Verma, DR)

AND

CCE, Ghaziabad

...

Appellant

(Rep by Sh. R.K. Verma, DR)

versus

M/s Opel Alloys (Pvt.) Ltd.

...

Respondent

(Rep. by Sh. S. Sunil, Adv.)

**CORAM : HON'BLE MS. JYOTI BALASUNDARAM, VICE-
PRESIDENT**

Final ORDER NO. 153-15 H/09-sm (BRD)

PER JYOTI BALASUNDARAM :

Against the order of the Commissioner (Appeals), both the assessee as well as the Revenue are in appeal – while the assessee is in appeal against the duty demand of Rs. 2,21,235/- confirmed on shortages, the Revenue is in appeal against the dropping of penalty proceedings.

2. I have heard both sides. I find that the assessee had requested for cross-examination of the Panchas to establish that the stock taking resulting in shortages was not properly done; the Department addressed a letter dated 24.11.2005 to the assessee asking them to adduce reasons for seeking cross-examination; on 20.01.2006 the assessee once again reiterated their request for cross-examination; the impugned order was passed without hearing them; the grievance that no hearing was granted by the adjudicating authority was raised before the Commissioner (Appeals), who has not dealt with this submission in the impugned order.

3. Since the record does not show that any hearing was granted to the assessee after 20.01.2006, I agree with the assessee that the order suffers from the contravention of the principles of natural justice. Hence, I set aside the impugned

order and remit the case to the adjudicating authority for fresh decision after considering the request for cross-examination of the Panchas and after affording a reasonable opportunity to the assessee of being heard in their defence.

4. The appeals are thus allowed by way of remand.

(Dictated and pronounced in the open Court on the 5TH day of February, 2009)

(JYOTI BALASUNDARAM)
VICE-PRESIDENT

Golay