

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/1595/2007 – SM[BR]

Date 02/03/2009

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

To :
M/S U.P.ALLOYS PVT LTD
122, 236A, KALPI ROAD, FAZAL GANJ, KANPUR (U.P)
M/S U.P.ALLOYS PVT LTD

Appellant
Vs
Respondent

C.C.E. KANPUR

I am directed to transmit herewith a certified copy of Final order No. 198 / 2009- SM[BR] dated 20.2.2009
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. KANPUR

117/7, SARVODAYA NAGAR, KANPUR 208005.

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 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.

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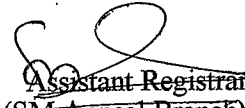
12 Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagarava Road, T. Nagar, Chennai

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

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Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
BENCH-SM

E./1595/2007-SM

[Arising out of Order-in Appeal No.34-CE/APPL/KNP/2007 dated
24.01.2007 of Commissioner (Appeals), Kanpur].

Date of Hearing:16.1.09

For approval and signature:

Hon'ble Mr. 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 should 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 Departmental authorities?	

M/s.U.P. Alloys Pvt. Ltd.

...Appellant

[Represented by Shri R.Santhanam, Advocate]

Vs.

CCE, Kanpur

... Respondent

[Represented by Shri R.K. Saini, DR]

Coram: Hon'ble Mr. RAKESH KUMAR, MEMBER (TECHNICAL)

Final ORDER NO. 198109-sm(BK) DATED: 16.01.2009

PER: **RAKESH KUMAR**

The facts leading to filing of this appeal are, in brief, as under:-

2. On 20.10.97 a show-cause notice was issued by the Asstt. Commissioner, Central Excise, Nasik to the appellant for recovery

of allegedly short paid central excise duty amounting to Rs.6,70,736/- on 473.962 M.T. of M.S. Ingots alleged to have been cleared by them without payment of duty during the period from April, 1997 to June 1997 and also for imposition of penalty on them under Rule 9(2), 52A and 173Q read with Rule 26 of Central Excise Rules 1944. The basis of the allegation of clandestine clearance of 473.962 MTs of M.S. Ingots during April 1997 to June 97 period is that during this period on the basis of the actual electricity consumption of the appellant and the fact that production of 1 M.T. of M.S. ingots requires 1000 Units of Electricity, their actual production should have been 1587.662 MTs., as against production of 1115.70 MTs. recorded in the RG-I Register and cleared on payment of duty. It appears that around the same period similar show-cause-notices dated 21.10.97 were issued to other manufacturers of M.S. Ingots & induction Furnace – M/s. Alfa Castings Pvt. Ltd., M/s. Hans Castings Ltd. Etc. against whom the duty demands were confirmed by the Commissioner and in all those cases the Tribunal remanded the matter to the Commissioner for de-novo decision after taking into account the pleas made by the appellant with regard to the power consumption, and if necessary, after conducting experiments spread over a period of several days in the factory to arrive at the figure of power consumption for production of 1 M.T. of M.S. ingots. Accordingly, the experiments for determining power

consumption per M.T. of M.S. Ingots were conducted in the factories of various manufacturers of M.S. ingots including the factory of the appellant. In the factory of the appellant the necessary experiments were conducted by the jurisdictional Central Excise Officers in the presence of puchawitnesses on 14.3.01, 17.3.01 & 21.3.01. On 14.3.01 and 17.3.01 the M.S. Ingots were produced in one heat and on 21.3.01 there were two heats. On 14.3.01 there was also power failure for about half an hour. On the basis of these experiments, the power consumption per M.T. on 14.3.01 was found to be 1406 Unit Per M.T., on 17.3.2001 the same was found to be 1305 per M.T. and on 21.03.01 the same was found to be 1319 Unit Per M.T. The case was decided by the Joint Commissioner vide order in original dated 7.12.01. In this order the Joint Commissioner observed that though the experiments regarding power consumption per M.T. of M.S. Ingots were conducted in the factory of the appellant, in view of certain discrepancies and duration of the experiments, it is decided to adopt the results of similar experiment conducted in the factory of M/s. Hans Casting Pvt. Ltd. And accordingly he adopted the norm of 1100 Units Per M.T. and since the total electricity consumption of the appellant during the period of dispute was 14,65,796 Units, he held that their actual production should have been 1332.542 MTs. as against the production of 1115.7 MT recorded in the RG-I Register.

Accordingly he confirmed the duty demand of Rs.3,06,853/- on 216.842 M.Ts. of M.S. ingots alleged to have been cleared without payment of duty. Besides this, he also demanded interest on this duty under section 11AB and imposed penalty of equal amount on the appellant under section 11AC. The appeal against this order to the Commissioner (Appeals) was dismissed vide the impugned order in appeal No.34-CE/APPL/KNP/2007 dated 24.01.2007. It is against this order the present appeal has been filed.

2. Heard both the sides.

3. Shri R. Santhanam, Advocate, Id. Counsel on behalf of the appellant pleaded that though in the appellant's own factory the experiments were conducted in the presence of the independent Panchas on 14.03.01, 17.03.01 and 21.03.01 for determining electricity consumption in production of 1 M.T. of M.S. ingots and in these experiments the electricity consumption per M.T. was found to be 1406 Units per M.T., 1305 and 1319 Units Per M.T. respectively, no cogent reasons have been given by the Jt. Commissioner as well as by the Commissioner (Appeals) for not taking into account these norms, as determined in the actual experiments conducted in the appellant's factory, that on the basis on these experiments the average electricity consumption

per M.T. would come to be 1340 Unit Per M.T., that other than the electricity consumption there is no evidence of clandestine removal, that it is wrong to adopt the norm of electricity consumption per M.T. of other Units, as the same varies from factory to factory and that the show cause notice proceeds on imaginary and fictitious figures based on figures of production based on assumptions and presumptions both in regard to power consumption and value of the unaccounted ingots allotted to have been produced. He, therefore, pleaded that the impugned order is totally incorrect.

4. Shri R.K.Saini, Id. DR defended the impugned order reiterating the Commissioner (Appeals) findings. He also relied on the Tribunal's order in appeal No.1428/08 - AM dated 18.11.2008 in the case of Balbir Steel (P) Ltd. & Others vs. CCE Kanpur wherein, the Commissioner's order demanding duty from a similar Unit where the demand had been worked out on the basis of 1100 Units per M.Ts. of M.S. Ingots was upheld.

5. I have carefully considered the submissions from both the sides and perused the records. I find that the show cause notice dated 21.10.97 alleging unaccounted production cleared without payment of duty had been issued on the basis of the assumption that average power consumption for production of 1 M.T. M.S. Ingots is 1000 Units. Subsequently in the year 2001 the

experiments were conducted in the appellant's own unit by the Departmental Officers in presence of independent Punch Witnesses, on 14.3.2001, 17.3.01 and 21.3.01. On 14.3.01 and 17.3.01 there was only one heat and on 21.3.01 there was two heats. On 14.3.01 there was also power break down for half an hour. The power consumption per M.T. of M.S.Ingots noticed on 14.3.01, 17.3.01 and 21.3.01 was 1406 per M.T., 1305 per M.T and 1319 per M.T. respectively. However, the Joint Commissioner, while adjudicating this matter, has rejected the findings of these experiments on the ground that on first 2 days i.e. 14.3.01 and 17.3.01, there was only one heat, While the power consumption per M.T. should have been determined on the basis of two heats and it is on this basis that he has adopted the figures of power consumption noticed in respect of the factory of M/s. Hans Casting, on the basis of similar experiments, had been found to be about 1100 Unit per M.T. However I find that the reasons given for not accepting the results of the experiments conducted in the appellants own Unit are not correct as the power consumption determined on 17.3.01 - 1305MT based on one heat almost tallies with the power consumption of 1319 per MT determined on 21.3.01 based on two heats. The reason for higher power consumption of 1406 unit per M.T. noticed on 14.3.01 was obviously on account of half an hour's power failure. Power consumption for production of 1 M.T. M.S. Ingots will vary

from Unit to Unit and cannot be expected to be absolutely uniform. Moreover, it would also depend upon the power break downs. I, therefore, hold that impugned order, which is based on the assumption that the average power consumption of two units for production of 1 M.T. M.S. Ingots as against the figure of about 1300 Unit per M.T. noticed in the appellant's factory on the basis of actual experiments conducted, is not correct. The impugned order, therefore, is set aside. The matter is remanded to the original adjudicating authority for re-quantifying the duty demand by taking electricity consumption norm in the Appellant unit as 1300 Units per MT and redetermining the quantum of penalty on the basis of revised duty demand.

[Pronounced in the open Court on

20/2/09]

(RAKESH KUMAR)
MEMBER (TECHNICAL)

Anita