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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/252 /2007 – SM[BR] Date 08/04/2009

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

To :
M/S SHARMA STEEL ROLLING MILLS
127, INDUSTRIAL AREA, JHOTWARA, JAIPUR.

M/S SHARMA STEEL ROLLING MILLS Appellant

Vs

C.C.E. JAIPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 304 / 2009 –SM[BR] dated 31.3.2009 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
   N.C.R.B., STATUE CIRCLE, C- SCHEME, JAIPUR.
2. Adv. / Consult
   NONE;--------------------

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). Thyagarava 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
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Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO.II

E/Appeal No.252/2007 -SM(Br)

(Arising out of order in appeal No.239/GRM/CE/JPR.I/06 dated 30.10.2006 passed by the Commissioner of Central Excise (Appeals), Jaipur)

M/s Sharma Steels Rolling Mills — Appellant

Vs

CCE, Jaipur — Respondent

Appeared for Appellant : None
Appeared for Respondent : Shri S. Gautam, DR

Date of Hearing: 19.3.09

Coram: Hon'ble Mr.D.N. Panda, Judicial Member

Final Order No. 304 /2009—SM(BR)

Per D.N. Panda:

None present for the appellant. Learned DR submits that the appellant was involved in clandestine removal of goods of 10.101 MT of MS angles. Added to this, when the inventory was taken, shortage of 49.50 MT of scrap was noticed and that scrap was used for clandestine manufacture of MS Angles of 47.143 MT. The value thereof was Rs.10,14,329/-. Duty involved in this aspect is Rs. 1,24,154/-.

2. He further submits that taking into consideration both the allegations aforesaid, total duty evaded was Rs.1,50,760/-. Learned Commissioner while deciding the appeal simply dealt with

duty demand of Rs.1,24,154/- in respect of scrap found short and alleged to be used in manufacture of finished product cleared by appellant without payment of duty. In para 7 of the order in appeal, noticing that Cenvat credit of Rs.52,712/- was attributable to the scrap used by the appellants, a demand of Rs.71,442/- as against demand of Rs.1,50,760/- was ultimately imposed. He did not deal at all the allegation of duty evasion of Rs.26,606/- which was subject matter of page 19 of the appeal folder carrying the order of adjudication. The Commissioner (Appeals) has also reduced the penalty to Rs.79,318/-. A reasoned and speaking order should have been passed. Therefore, he submits that the order needs careful examination by the same authority who has passed the order in appeal.

3. Heard the learned DR and perused the record. The demand for the present goods composed of two elements – the duty part of Rs.1,24,154/- relates to shortage of 49.50 MT of scrap alleged to have been used for manufacture of MS Angles and the second component is duty Rs.26,606/- for allegation of clandestine removal of goods. Learned Commissioner(Appeals) held that the appellant had reversed cenvat credit of Rs.52,712/ and should get relief to that extent and balance duty amount of Rs.71,442/- was demanded. It is necessity that the learned Commissioner should re-examine the issue to find out whether scrap generated by appellant was raw material for the process of manufacture. The matter requires scrutiny. There is also necessity that learned

Commissioner should pass a reasoned and speaking order as to the clandestine removal of goods.

4. The matter is thus remitted to the learned Commissioner (Appeals) to re-examine the issue affording opportunity of hearing to the appellant and pass a reasoned and speaking order.

(Order dictated and pronounced in the open Court).

(D.N. Panda)
Judicial Member

MPS*