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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/945 /2007 – SM[BR] Date 19/05/2009

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

To :
C.C.E. DELHI IV
NEW CGO COMPLEX, NH-IV, FARIDABAD,
HARYANA 121001.

C.C.E. DELHI IV Appellant

Vs

M/S NORTH WEST SWITCHGEAR LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 392 / 2009 –SM[BR] dated 12.3.2009 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
   M/S NORTH WEST SWITCHGEAR LTD.
   14/3, MATHURA ROAD, FARIDABAD.
2. Adv. / Consult SHRI R.C. GUPTA ADV.
   KOTHI NO. 557, SECTOR -19, FARIDABAD-121002

3 S.D.R
~~4 J.C.D.R.~~
5 Bar association, CESTAT, New Delhi
6 Director Publications, Customs, Excise. I.P. Estate, New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11 M/s. Deeparchie Publications, M-93, Marg, 46, Saket, New Delhi 110017
12 Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
13 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15 LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
16 Office Copy
17 Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI

COURT – III

EXCISE APPEAL NO. 945 OF 2007-SM

[Arising out of Order-in-Appeal No. 114-115/CE/Appeal/DLH-IV/2006 dated 12.01.2007 passed by the Commissioner (Appeals), Central Excise, Delhi-IV, Faridabad]

For approval and signature:

Hon'ble Mr. P.K. Das, Member (Judicial)

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 would 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?	
4.	Whether order is to be circulated to the Departmental authorities?	Yes

CCE, Delhi-IV,
Faridabad — Appellant

Vs.

M/s. North West Switchgear Ltd., — Respondent

Appearance:

Shri Sansar Chand, D.R. for the Revenue/appellant;
Shri R.C. Gupta, Advocate, for the appellant;

Coram:

Hon'ble Mr. P.K. Das, Member (Judicial),

Date of hearing/decision: 12th March, 2009

FINAL ORDER NO. 392/09-SM (BR) **dated** 12.3.09

Per P.K. Das:

Revenue filed this appeal against the order-in-appeal No. 114-115/CE/Appeal/DLH-IV/2006 dated 12.01.2007 passed by the Commissioner (Appeals) whereby adjudication order was set aside.

2. The relevant facts of the case, in brief, are that the respondents are engaged in the manufacture of Switchgear of "North-West" brand classifiable under heading No. 85.36 of the Schedule to the Central Excise Tariff Act, 1985. The Central Excise Officers visited the respondents' factory on 30.12.2003. They found some loose papers from the table of Shri P.K. Arora, Dy. General Manager of the respondent company. The said papers indicate the clearance of scrap of Plastic, Brass, M.S. and other material sold on various dates during the period from 2.8.2000 to 28.11.2003. The said officers recorded the statement of Shri P.K. Arora wherein he stated that he did not know whether any invoice was issued ~~or not~~ against those removal. The officers also recorded statement of Shri P.D. Agarwal, C.M.D. of the respondent company wherein he stated that scraps were sold on the basis of said loose papers but he cannot say whether central excise duty was paid on the said scrap. The respondents deposited the duty of Rs. 7 lakhs. The

original authority confirmed the demand of duty of Rs. 7,42,995/- and imposed penalty of equal amount along with interest. He has also appropriated the amount of Rs. 7 lakhs as deposited by them. The Commissioner (Appeals) set aside the adjudication order.

3. Learned D.R. on behalf of the Revenue reiterates the grounds of appeal. He submits that Shri P.D. Agarwal, CMD accepted the clearance of the goods and failed to produce duty paying documents and, therefore, original authority correctly confirmed the demand of duty. He, further, submits that the representative of the assessee accepted the clearance of goods without payment of duty and, therefore, there is no need for further investigation.

4. Learned Advocate on behalf of the respondents reiterates the findings of the Commissioner (Appeals). He drew the attention of the Bench to the statement of clearance of scrap during the relevant period. He submits that the statement indicates that during the relevant period scrap was generated approximately 30%. He further submits that as per quantity mentioned in the show cause notice the removal of scrap would be approximately 57% to 82% generated during the process of manufacture of finished goods, which is absolutely impossible. On a query from the Bench the learned Advocate fairly submits that this fact was not considered by the original authority.

5. I find from the order of the Commissioner (Appeals) that he has proceeded on the basis that the Central Excise Officer failed to make proper inquiry. But, I find force in the submission of the learned Advocate in respect of generation of scrap from 58% to 82% as mentioned in their statement was not examined by the lower authorities. In my view, the matter requires to be examined on this issue also. Accordingly, impugned order is set aside. The matter is remanded back to the original authority to examine the case afresh after considering the submissions of the appellants as above amongst others. The respondents are at liberty to produce any other evidence with their submissions. Appeal is allowed by way of remand.

(Dictated & pronounced in the Open Court.)

(P.K. DAS)
MEMBER (JUDICIAL)

RK