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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/906 /2007 – SM[BR] Date 20/05/2009

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

To :
R.S INDUSTRIES (RM) LTD.
206, NAVJEEVAN COMPLEX, 29, STATION ROAD,
JAIPUR (RAJ.)

R.S INDUSTRIES (RM) LTD. Appellant
Vs
C.C.E. JAIPUR I Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 420 / 2009 –SM[BR] dated 23.3.2009 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 I
N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.
2. Adv. / Consult
MR.K.K ANAND
A-5,BASEMENT,LAJPAT NAGAR-III NEW DELHI-24
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
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Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Excise Appeal No.906 of 2007-SM (BR)

[Arising out of Order-in-Appeal No.306(GRM)CE/JPR-I/2006 dated 8.1.2007 passed by the Commissioner of Customs & Central Excise, Jaipur-I]

Date of Hearing/ Decision:23.03.09

For approval and signature:

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

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1. Whether Press Reporters may be allowed to see 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. R.S. Industries (RM)Ltd. ...Appellants
[Rep. by Ms. Asmita Nayak, Advocate]

Vs.

CCE, Jaipur-I ...Respondent
[Rep. by Shri Sansar Chand, DR]

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

Final Order No. 420/09-SM (BR) /Dated:23.3.2009

Per P.K. Das:

The relevant facts of the case, in brief, are that the appellants are engaged in the manufacture of Non-Alloy Steel Ingots classifiable under sub-heading No.7206.90 of the Schedule to the Central Excise Tariff Act, 1985. The dispute relates to claim of abatement during the period 1998-

1999 and 1999-2000. The appellants paid duty under Compounded Levy Scheme under Section 3 A of the Central Excise Act, 1944 read with Rule 96 ZO of the erstwhile Central Excise Rules, 1994. The appellants claimed abatement of duty for 420 days. The Original Authority allowed the claim for 412 days. He has denied the abatement for 8 days for the reason that in the case of Saturday/Sundays and holidays the intimations were sent through telegram. The Commissioner (Appeals) upheld the Adjudication Order.

2. Ld. Advocate on behalf of the appellants submits that in six occasions during the two financial years, they sent telegram on Saturday/Sunday and holidays and they filed the claim in writing on the next working days. She submits that vide Trade Notice No.31-CE/99 dated 10.09.99 issued by the Commissioner of Central Excise, Chandigarh-I, allowed intimation given by telegram for the holidays. She further submits that the Hon'ble Punjab & Haryana High Court in the case of Commissioner of Central Excise Vs. Vimal Alloys Ltd. reported in 2006 (205) ELT 80 (P&H) held this issue in favour of the assessee.

3. Ld. DR reiterates the findings of the Commissioner (Appeals). He submits that Rule is providing that "the manufacturer shall inform in writing". So, telegram cannot be accepted as intimation for closure of furnace.

4. After hearing both the sides and on perusal of the records, I find that in the year 1998-99 and 1999-2000, on six occasions, they had given

intimation through telegram for closure of furnace on Saturdays/Sundays and holidays and intimation in writing was submitted on the next working day. Abatement was allowed from next working day except Saturday/Sunday and holidays. The Commissioner (Appeals) observed that the date of the submission of the telegram by the appellant to Postal Department cannot be treated as the date of information to the Department. By Trade Notice No.31-CE/99 dated 10.09.99, the Commissioner of Central Excise, Chandigarh-I clarified that in the case of closure scheduled for Saturdays/Sundays and holidays, where prior information could not be given, the party should inform the R.O., Divisional AC and the Commissioner by telegram on next date itself, giving all the details as required under the Rules. The Tribunal in the case of Vimal Alloys Ltd. Vs. Collector of Central Excise, Chandigarh - 2002 (150) ELT 318 (Tribunal-Delhi) held that intimation of closure on public holidays was received on the next working days, abatement of duty cannot be denied. It is seen that the Hon'ble Punjab & Haryana High Court upheld the decision of the Tribunal in the case of CCE Vs. Vimal Alloys Ltd. as reported in 2006 (205)ELT 80 (P&H). In the present case, there is no dispute that the appellant had intimated the Department through telegram about the closure of furnace on Saturdays/Sundays and holidays and also filed the intimation in writing on the next working day. It is noted that the Department allowed the claim of abatement from the next working day. Therefore, claim of abatement for Saturdays/Sundays and holidays sent through telegram are liable to be accepted. Accordingly, the impugned order is set aside and the appeal is allowed with consequential relief.

Order dictated & pronounced in the open court on 23.03.2009.

(P.K. Das)
Member (Judicial)

Ckp.