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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/357 /2007,384 /2007,926 /2007 – SM[BR] Date 25/05/2009

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

To :
C.C.E. JAIPUR-I

NCRB, STATUE CIRCLE, C SCHEME, JAIPUR

C.C.E. JAIPUR-I Appellant

Vs

M/S RATHI BARS LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 462 – 464 / 2009-SM[BR] dated 21.4.2009

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent

1. M/S RATHI BARS LTD.
2. RATHI BARS LTD.
3. RATHI BARS LTD.

PLOT NO. SP-1-7, RIICO, INDL. AREA, (RAJASTHAN)
2. Adv. / Consult SHRI BIPIN GARG ADV.
B-1/1289-A, VASANT KUNJ NEW DELHI

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)
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Assistant Registrar
(SM Appeal Branch)

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

COURT – III

CENTRAL EXCISE APPEAL NO. 384, 357 & 926 OF 2007-SM

[Arising out of Order-in-Appeal No. 293-294(GRM)CE/JPR-I/2006 dated 07.12.2006 passed by the Commissioner (Appeals-I), Central Excise, Jaipur]

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?	No.
2.	Whether it would 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?	Yes

CCE, Jaipur-I — Appellant

Vs.

M/s. Rathi Bars Limited — Respondent
& Vice versa

Appearance:

Shri S.K. Bhaskar, D.R. for the Revenue;
Shri Bipin Garg, Advocate for the respondents

Coram:

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

Date of hearing/decision: 21st April, 2009

FINAL ORDER NO. 462-464/09 **dated** 21/4/09

Per P.K. Das:

These appeals are arising out of common order and, therefore, both are being taken up together for disposal.

2. The relevant facts of the case, in brief, are that the assessee is engaged in the manufacture of CTD Bars classifiable under Chapter 72 of the of the schedule to the Central Excise Tariff Act, 1985. Central Excise officers visited the respondent's factory on two occasions on 13.8.2001 and 31.7.2002 and conducted stock verification. The said officers detected shortage of finished goods and inputs on both the occasions. Shri Ajay Kumar Malhotra, Authorized Signatory of the assessee admitted shortage and debited the duty of Rs. 5,13,300/- and Rs. 1,84,913/- on both the occasions. Show cause notices dated 13.10.2005 and 25.10.2005 were issued proposing to appropriate the amount deposited by the assessee and to impose penalty under Section 11AC of the Act. The original authority confirmed the demand of duty and appropriated the amounts as deposited by them and imposed penalty of equal amounts in both the cases. Commissioner (Appeals) upheld the demand of duty and set aside the penalties in both the cases. Hence, the assessee filed appeal No. 926/07 against demand of duty of Rs.

5,13,300/- and the Revenue filed two appeals against setting aside the penalties imposed in two adjudication orders.

3. After hearing both sides, I find that the shortage were detected during the course of stock verification, which was admitted by the authorized signatory of the assessee and paid the duty long before issue of show cause notices. Learned Advocate on behalf of the assessee submits that the show cause notices are hopelessly barred by limitation. He also submits that no stock taking was conducted in proper manner and it was simply based on presumption. Therefore, demand of duty is not sustainable. He relied upon the decision of the Tribunal in the case of Monika Electronics Ltd. vs. CCE, Delhi, reported in 2006(204) ELT 468 (Tri.-Del.). On the other hand learned D.R. submits that show cause notice proposed the amount of duty debited by the assessee would be liable for appropriation in government account. Hence, the demand is not barred by limitation. He also submits that the assessee failed to give proper explanation of the shortage on both occasions. So, it is presumed that the goods were cleared clandestinely.

4. I find that shortage of stock were detected on 13.8.2001 and 31.7.2002. The assessee admitted the shortage and paid the duty voluntarily without any protest. It appears that in reply to show cause notice the assessee contended that stock taking was not conducted in proper manner. It is seen that shortages were detected on 13.8.2001 and 31.7.2002 and Show Cause Notices were issued on 13.10.2005 and

25.10.2005. It is noted that prior to show cause notices, respondent had not raised any objection against shortage of goods and payment of duty. On the contrary, they had admitted shortage and paid duty long before issue of notices. So the contention of the learned Advocate that stock taking was on the basis of eye estimation cannot be accepted. I also agree ~~that~~ with the submission of the learned D.R. that it was proposed in the show cause notice to appropriate the amount as deposited by the assessee. So, the contention of the learned Advocate that demand of duty is barred by limitation is not sustainable. Hence, I uphold the demand of duty and accordingly, appeal filed by the assessee is rejected.

5. Regarding imposition of penalty under Section 11AC of the Act, learned Advocate submits that the authorized signatory of the assessee in his statement on the spot explained that shortage of finished goods has occurred due to wrong intimation given by the illiterate and unskilled labour. There is no material available that the assessee cleared the goods clandestinely. Hence, imposition of penalty under Section 11AC is not warranted. Hon'ble Punjab & Haryana High Court in the case of CCE, Ludhiana vs. Omkar Steel Tubes (P) Ltd., reported in 2008 (221) ELT 200 (P&H) held that to impose penalty various elements envisaged by Section 11AC of the Act are to be satisfied including presence of mens rea. So, I agree with the finding of the Commissioner (Appeals) that there is no sufficient evidence to prove that the goods have been cleared clandestinely. Hence, I do not find any reason to interfere with the order

of the Commissioner (Appeals). Accordingly, appeals filed by the Revenue are also rejected.

6. In view of the above discussion, all the appeals are rejected.

(Dictated & pronounced in the Open Court.)

(P.K. DAS)
MEMBER (JUDICIAL)

RK