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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Appeal No. E/352 /2006 - EX[DB] Date 26/08/2009

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

To :
VINDHYACHAL STEEL FOUNDRY.
(UNIT OF BIRLA CORPORATION LTD)
P.O. BIRLA VIKAS, SATNA
485005

VINDHYACHAL STEEL FOUNDRY. Appellant

Vs

C.C.E BHOPAL Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 546/2009-**EX[DB]** dated 21-8-09 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
   C.C.E BHOPAL
   HOSHANGABAD ROAD, 48, ADMINISTRATIVE AREA, AREA HILLS, BHOPAL (M.P.) 462011
2. Adv. / Consult
   MR.SANJAY GROVER
   LAW OFFICES, E-500, GREATER KAILASH-II, NEW DELHI-110 048.

3 C.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
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Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R.K.Puram, New Delhi-110066.
Principal Bench, New Delhi.

E/352/06

(Arising out of Order-in-Appeal No.102/CE/BPL/2005 dt.29.9.05 passed by the Commissioner(Appeals), Bhopal)

M/s. Vindhyachal Steel Foundry — Appellant

Versus

CCE, ~~Raipur~~ Bhopal — Respondent

Appearance
Sh. Sanjay Grover, Adv. For Appellant

Sh. Sumit Kumar, DR for Respondent

Coram: Hon'ble Mr. D.N.PANDA, JUDICIAL MEMBER
Hon'ble Mr. RAKESH KUMAR, MEMBER (TECHNICAL)

Date of decision: 18.8.09
Final Order No. 546/09-Ex

Per D.N.Panda:

Shri Sanjay Grover, Ld. Counsel submits that it is only for no reconciliation of the stock figure shown by the investigating agency with the records, there was excess stock of 24.823 M.T of finished casting products alleged to have been found in the premises of the appellant. Both the authorities below concurrently held that the excess stock found was to be dutiable and also liable to redemption fine as well as penalty under Rule 173Q of Central Excise Rules,1944. Ld. Appellate Authority considering that redemption fine of Rs.8 lakhs (Rs.eight lakhs) imposed in adjudication was not proper, he reduced the same to Rs.2 lakhs.

But he did not interfere into the penalty aspect. Ld. Counsel therefore, submits that once the appellant got concession for redemption fine, there should be no penalty at all. Duty has already been paid in respect of the excess stock.

2. Ld. DR relying on page 30 & 43 of the paper book submits that the appellant was given proper opportunity to explain about the excess stock of 24.823 M.T of casting found. When there was no convincing reply, adjudication has resulted in demand of duty followed by redemption fine on seizure and confiscation. Ld. Commissioner(Appeals), considering totality of facts and circumstances, has already granted reduction in respect of redemption fine. Therefore, there is no scope to interfere in second appeal.

3. Heard both sides and perused the records.

4. There is no dispute that investigation made on 10.2.01 resulted with finding of excess stock of 24.823 M.T. of finished casting products. Such investigation process continued upto 2.3.01. There is nothing on record to show whether the appellant had come out with clean hands to explain the excess stock found by investigation. Today, the appellant submits an extract of R.G.I register to explain that there was no excess stock at all. The documents so produced today does not explain pin pointedly how the investigation arrived at excess stock. Both the authorities concurrently found that there was an excess stock on the date of investigation. Also they found that there was nothing reconciled made before them. When the appellant failed to explain in 20 days time after investigation, that clearly shows that

the appellant had no case. The appellant rather come forward to discharge duty liability relating to the stock discrepancy noticed. Ld. Commissioner has leniently considered the redemption fine and reduced the same significantly for the reason given by him in his order that the goods were to be provisionally released to earn duty for revenue. The appellant having suffered the duty and redemption fine, it appears that imposition of penalty of Rs.2,38,000/- is disproportionate. Therefore, on the facts and circumstances of the case we find that the appellant does not deserve total waiver of the penalty. But in the fitness of the circumstances, the penalty is directed to be reduced to Rs.1,50,000/-(Rs. one lakh fifty thousand only). With this limited relief, order of the Ld. Commissioner(Appeals) is confirmed in so far as that relates to the duty and redemption fine is concerned.

Thus appeal is partly allowed to the extent indicated aforesaid.

Order dictated in the open Court.

(D.N.Panda)
Judicial Member

(Rakesh Kumar)
Member Technical

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