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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/2106/2006-2115/2006 – SM[BR]

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

Date 03/08/2009

To :
C.C.E. CHANDIGARH
C.R. BUILDING, PLOT NO. 19, SECTOR 17-C,
CHANDIGARH 160017
C.C.E. CHANDIGARH

M/S SHIVA CASTINGS P LTD. Appellant
Vs
Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 840 – 849 / 2009 - **SM[BR]** dated 4.5.2009 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 SHIVA CASTINGS P LTD.
VILL TOORAN AMLOH ROAD,MADNI GOBINDGARHVILL TOORAN AMLOH ROAD,MADNI GOBINDGARH, PUNJAB
2. Adv. / Consult
MR.BIPIN GARG
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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2. M/S CHOPRA STEEL STIRPS
BHADLA ROAD, VILL ALOUR,KHANNA, PUNJAB

Assistant Registrar
(SM Appeal Branch)

3. M/S GOPAL STEEL IND
BHADLA ROAD, VILL ALOUR KHANNA, PUNJAB

4. M/S PAWAN STEEL TUBES P LTD.
G.T.ROAD MANDI GOBINGARH, PUNJAB

5. M/S R.S.ISPAT P LTD.
AMLOH ROAD,MANDI GOBINDGARH, PUNJAB

6. M/S SHIV SARASWATI STEEL P LTD
AMLOH ROAD,MANDI GOBINDGARH, PB

7. M/S SHIVA CASTINGS P LTD.
VILL ROORAN,AMLOH ROAD,MANDI GOBINDGARH, PB

8. M/S SHIVA CASTINGS P LTD.
VILL TOORAN AMOLH ROAD, MANDI GOBINDGARH

9. M/S SHIVA CASTINGS P LTD.
VILL TOORAN,AMLOH ROAD,MANDI GOBINDGARH, PUNJAB

10. M/S H.L.CHOPRA STEEL ROLLING MILLS
BHADLA ROAD, VILLAGE ALOUR,KHANNA, PUNJAB

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

Excise Appeals Nos.E/2106-15/06 –SM (BR)

[Arising out of Order-in-Appeal No.224-233/CE/CHD/06 dated 29.03.2006 passed by the Commissioner of Central Excise (Appeals), Chandigarh]

Date of Hearing/ Decision:04.05.09

For approval and signature:

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

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3. 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? : Yes

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CCE, Chandigarh ....Appellants

[Rep. byShri S. Gautam, DR]

VS.

(1) M/s. Shiva Castings (P) Ltd.
(2) Shri Lal Chand, Director
M/s. Shiva Castings Pvt. Ltd.
(3) Shri Devinder Kumar, Authorised Signatory
M/s. Shiva Castings Pvt. Ltd.
(4) Shri Munish Gupta, Authorised Signatory
Of M/s. Shiva Castings Pvt. Ltd.
(5) M/s.H.L. Chopra Steel Rolling Mills
(6) M/s. Gopal Steel Industries
(7) M/s.Shiv Saraswati Steel Strips Pvt. Ltd.

(8) M/s. Pawan Steel Tubes Pvt. Ltd.
(9) M/s. R.S. Ispat Pvt. Ltd.
(10) M/s.Chopra Steel Strips

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

Final Order No 840-849/2009-SMCBR/Dated:04.05.2009

Per P.K. Das:

All these appeals are arising out of common order and, therefore, all are being taken up together for disposal.

2. The relevant facts of the case, as per record, in brief, are that M/s. Shiva Castings Pvt. Ltd., Respondent No.1 is engaged in the manufacture of Non-Alloys Steel Ingots classifiable under Chapter 72 of the Schedule to the Central Excise Tariff Act, 1985. On 13.08.2003, the Central Excise Officers visited factory of Respondent No.1 to verify 11 parallel invoices issued by them. They recorded the statement of Shri Lal Chand, Director of the Respondent No.1 company on 13.08.2003 and Shri Devinder Kumar, Authorised Signatory, Respondent No.3 on the same date. They also recorded the statement of Shri Munish Kumar Gupta, Authorised Signatory of the Respondent No.1 company, Respondent No.4 on 7.4.2004. They also recorded statement of the consignees as mentioned in the parallel invoices. A show cause notice dated 10.08.2004 was issued proposing to demand of duty on the basis of the parallel invoices and to impose penalty on the Respondent No.1 and to impose penalty on other

Respondents. The Original Authority confirmed the demand of duty of Rs.3,83,377/- along with interest and imposed penalty of equal amount on M/s. Shiva Castings Pvt. Ltd. (i.e. manufacturers) and also imposed penalty of Rs.1,00,000/- on Shri Lal Chand, Director of the appellant company and Rs.10,000.00 each on Respondent No.3 and 4. He also imposed penalty on the other respondents, whose names were mentioned in the invoices.

4. Ld. DR on behalf of the Revenue submits that Shri Lal Chand, Director of M/s. Shiva Castings Pvt. Ltd., manufacturer of the goods admitted that the parallel invoices appear to be signed by the authorised signatory. He further submits that during the stock verification, it was found shortage of goods, which they have admitted cleared without payment of duty. He further submits that the authorised signatory did not disown the signature in the parallel invoices. He also submits that the entire demand of duty was confirmed on the basis of the statement along with corroborative evidences viz. octroi receipts and the vehicles numbers as mentioned in the invoices, owned by the manufacturer. He further submits that the consignees received the goods, clandestinely removed by the manufacturer and, therefore, they are required to be penalised.

5. Shri Bipin Garg, Advocate appearing on behalf of Respondent Nos.1 to 4 submits that Shri Lal Chand in his statement categorically

stated that the parallel invoices are manipulated evidence. He further submits that the Revenue failed to disclose as to where the parallel invoices were found. He further submits that the copy of the handwriting experts opinion was not supplied to them. He further submits that the manufacturer disowned the parallel invoices. It is his contention that the parallel invoices were not found at their factory and they have no concern with those evidences. He relied upon the several case laws.

5. Shri Prince Gupta appearing on behalf of M/s. H.L. Chopra Steel Rolling Mills, M/s. R.S. Ispat Ltd. and M/s. Chopra Steel Rolling Mils and M/s. Pawan Steel Tubes Pvt. Ltd. submits that the respondents in the statement categorically denied that the goods were not supplied to them. Shri G.S. Sandhe, Advocate appearing on behalf of M/s. Gupta Steel submits that there is no material available that the goods were received by them.

6. After hearing both the sides and on perusal of the records, it is seen from the statement dated 13.08.2003 of Shri Lal Chand, Director of the Respondent No.1 that the central excise officers brought to the notice of the manufacturer about 11 parallel invoices. Shri Lal Chand, Director had given details of the corresponding transaction against the parallel invoices. It is also noticed that Shri Lal Chand stated in his statement that these 11 invoices had not been issued by them and it appears to be manipulated. On the other hand, it is seen from the said statement that

Invoice No.146 dated 28.1.2003 and No.139 dated 24.01.03 appears to have been issued by the authorised signatory, Shri Munish Gupta. It is also stated that the shortage of finished goods involving central excise duty of Rs.28,694/- detected during stock verification was cleared without payment of duty. Shri Manish Gupta stated that he was not in a position to clear to state that the signatures belong to him. He also stated that the signatures were very much identical to his signatures. Shri Devinder Kumar in his statement dated 13.8.2003 stated that these invoices have been issued from their factory except photocopies. Ld. Advocate submits that Shri Munish Gupta in his statement stated that Invoice No.146 dated 28.01.2003 was not signed by him. So, on perusal of the evidences and statements, I find that Shri Lal Chand in his statement stated that it appears to be manipulated. On the other hand, he has given the details of the corresponding invoices against the parallel invoices. Further, there is no categorical denial on the part of the Respondent No.1 in respect of 11 invoices. Ld. Advocate emphasised that the statements are indicating that it appears to be their signatures. I do not agree with the submission of the ld. Advocate. Shri Devinder Kumar accepted that the invoices were issued from their factory. On reading of statements of Shri Lal Chand, Respondent No.2, it appears that the goods were cleared on the basis of parallel invoices. Further, those were corroborated with Octroi Receipts. Furthermore, the Respondent

No.1 used their own vehicle as mentioned in the invoices. After considering all the evidences, there is no reason to look into the copies of the handwriting expert. The case laws relied upon by the ld. Advocate are not applicable in this case. The charge of clandestine removal is based on several evidences, which are not available in the said case laws.

7. The Original Authority rightly confirmed the demand of duty on the basis of the statement and the corresponding evidences viz. octrio receipts and the vehicles owned by the manufacturer themselves. I find that the Commissioner (Appeals) while passing the order had totally failed to appreciate the veracity of the statements and other evidences. Therefore, the demand of duty and imposition of penalty on M/s. Shiva Castings Pvt. Ltd., Respondent No.1, the manufacturer, are justified. However, the penalty of equal amount of duty was imposed on the Respondent No.1 under Rule 25 of Central Excise Rules and after considering the facts and circumstances of the case, imposition of penalty on Respondents No.2 to 4 are not warranted .

8. Regarding imposition of penalties on the consignees, Respondent Nos.5 to 10, the consignees in their statements categorically denied the receipt of the goods. The contention of the ld. DR is that the name of consignees were mentioned in the invoices and, therefore, it is presumed that they have received the goods. I am unable to accept the submission of the ld. DR. It is a case of clandestine removal of the goods by the

manufacturer. They have mentioned that the name of the consignees. On the other hand, Shri Lal Chand, Director of the manufacturer stated that they have sold the goods in cash. So, the names of consignees in the invoices are not relevant unless it is supported by any evidence, but consignees had received the goods. So, There is no material available that the consignees received these goods. Hence, imposition of penalty on the consignees are not justified.

9. In view of the above discussions, the order of the Commissioner (Appeals) is modified to the extent Appeal No.E/2106 of 2006-SM (BR) against M/s. Shiva Castings Pvt. Ltd. is allowed and the order of the Original Authority is restored. The demand of duty and imposition of penalty and interest against M/s. Shiva Castings Pvt. Ltd. are upheld. The appeals against other respondents are rejected.

Order dictated & pronounced in open court on 04.05.2009.

(P.K. Das)
Member (Judicial)

Ckp.