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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/659 /2007 AND E/ 1178 – 1179 / 2007 –SM[BR] Date 17/08/2009

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

To :
C.C.E, RAIPUR
CENTRAL EXCISE BUILDING, DHAMTARI ROAD,
TIKRAPARA, RAIPUR-492001.

C.C.E, RAIPUR Appellant

Vs

JAISWAL STEEL ENTERPRISES PVT. LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 917 -919 / 2009 –SM[BR] dated 4.8.2009 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   JAISWAL STEEL ENTERPRISES PVT. LTD.
   31, LIGHT INDUSTRIAL AREA, BHILAI (CG.)
   [2] M/S JAISWAL STEEL PROCESSING [P]LTD.
   178B, LIGHT INDUSTRIAL AREA BHILAI
   [3] M/S JAISWAL STEEL PROCESSING PVT.LTD.
   178B, INDUSTRIAL AREA, BHILAI,[C.G]
2. Adv. / Consult SHRI S.VYAS ADV.
   P-13, SECTOR 12,
   NOIDA-201301.
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-110066.
Principal Bench, New Delhi.

E/659/07 and E/1178-79/07

(Arising out of Order-in-Appeal No.122/RPR-II/2006 dt.12.12.06, 8-9/RPR-II/2007 dt.29.1.07 passed by Commissioner(Appeals), Raipur)

1. CCE, Raipur — Appellant

Versus

M/s. Jaiswal Steel Enterprises Pvt. Ltd.
Respondent

2. M/s. Jaiswal Steel Processing Pvt. Ltd. — Appellant

Versus

CCE, Raipur — Respondent
Vice-versa

Appearance
Sh. S.Gautam, DR For Appellant

Sh. Jeevesh Mahita, Adv. for Respondent

Coram: Hon'ble Mr. RAKESH KUMAR, MEMBER (TECHNICAL)

Date of order: 6.4.09
Date of decision: ~~6.4.09~~ 4.8.09
Final Order No. 917-919/2009 SM(Br)

Per Rakesh Kumar:

The facts of the case in brief leading to these three appeals – two appeals No.E/1178-1179/07 filed by M/s. Jaiswal Steel

Processing Pvt. Ltd., 178-B, Light Industrial Area, Bhilai(hereinafter referred to as M/s. JSPL) and third appeal No.E/659/07 filed by the Commissioner of Central Excise & Customs, Raipur, are as under:

1.1. M/s. JSPL having Central Excise Registration No.J-11/ACCA/5/94/72,73,84 & 86 are manufacturer of CI Socket B, CI Socket C, CI Sole plate and CI Brake Block etc. falling under Chapter 73 and 86 of the Central Excise Tariff. There is a sister company of this unit named M/s. Jaiswal Steel Enterprises Pvt. Ltd., 31, Light Industrial Area, Bhilai (hereinafter referred to as JSEP) with Central Excise Registration No.J-II/Sec.A/4/94/72,73,84 & 88 engaged in the manufacture of CI Socket, Anchor Plate, G.M.Balls, Ingot Mould, C.I.Plate, Mould Boxes etc. falling under Chapter 73, 84 and 88 of Central Excise Tariff Act,1985. Shri V.K.Jaiswal is the Director of JSPL. Both the units were availing Cenvat credit facility. On 25.6.99 both the units were visited by the Central Excise Officers.

1.2 In the factory of JSEP, shortage of 56.915 M.T. of Pig Iron and 232.125 M.T. of C.I.Scull scrap was found.

1.3. In the factory of JSPL so far as raw material is concerned, shortage of 28 MT of Pig Iron, 128.58 MT of C.I.Scull Scrap and 416 pieces of back plate and clips was found and 13.43 MT of excess stock of runners & risers were found and as regards the finished goods, shortage of 1343 pieces of C.I. sole plate and 653 pieces of C.I.brake block was detected. Besides this, excess quantity of finished goods – 2780 pieces of C.I.socket 'B', 635 pieces of C.I.socket 'C', 1829 and 1709 pieces of C.I.brake block and 50 pieces of C.I.brake block TPL 202 was detected. Since Shri Utpal Kumar Ghosh, Authorised Signatory of JSPL and Shri V.K.Jaiswal, Director of JSPL, could not give any satisfactory explanation for shortage of various items of inputs and finished goods and excess of certain items of inputs and finished goods, a SCN dt.24.12.99 was issued to JSPL and Sh. V.K.Jaiswal for demanding duty on the quantity of cenvated inputs and finished goods found short and confiscation of the inputs and finished goods which were in excess of the recorded balance in the form IV register/ R.G.I register and also for imposition of penalty on M/s. JSPL and its Director Shri V.K.Jaiswal.

1.4. On 18.8.2000 both the units – M/s. JSEP and M/s. JSPL were visited again by the Central Excise Officers. In case of JSPL, shortage of 12.12 MT vis-à-vis the stock as per records, in respect of cenvated Pig Iron and 153.36 MT in respect of cenvated C.I.skull scrap was found. As regards the finished goods, the shortage was found in respect of Anchor Plates – 1203 pieces of anchor plates. Accordingly, a SCN dt.15.2.01 was issued to JSPL for demanding Central Excise Duty on the stock of 1203 pieces of anchor plates found short and on the stock of cenvated inputs found short and also for imposition of penalty on JSPPL.

1.5. As regards M/s. JSEP, on 18.8.2000, no discrepancy was found in the stock of cenvated inputs and finished goods. However, the Central Excise Officers were of the view that since during the visit to this unit on 25.6.99, shortage of 56.915 MT in respect of Pig Iron and 232.125 MT in respect of C.I.scull had been found and since M/s. JSEP have not corrected their records, after taking into account, the shortage detected on 25.6.99, the book balance in respect of Pig Iron and C.I.Skull as on 18.8.2000 would be 60.955 MT and minus 173.535 MT respectively and since the physical stock available as on 18.8.2000 of these items was 117.379 MT and 58.475 MT respectively, as on 18.8.2000, there was excess stock of 56.424 MT of Pig Iron and 58.475 MT of C I scull scrap. It is on this basis that SCN dt.15.2.01 was issued to JSEP for confiscation of alleged excess stock under Rule 173Q(1) of Central Excise Rules,1944 and for imposition of penalty on them under the same Rule.

1.6 The show cause notice dt.15.2.01 against JSEP was adjudicated by the Addl. Commissioner vide order-in-original dt.31.8.06 by which the allegations made in the SCN were upheld and the stock of 56.424 MT of Pig Iron and 58.475 MT of C.I.scull valued at Rs.3,55,471/- and Rs.2,92,375/- respectively, held to be in excess of the adjusted recorded stock in Form.IV /RG.23 Part-I, was ordered to be confiscated under Rule 173Q(1) of Central Excise Rules,1944 with option to be redeemed on redemption fine in lieu of confiscation of Rs.one lakh, in addition for payment of duty and besides this, penalty of Rs.50,000/- was also imposed on M/s. JSEP under Rule 173Q(1) of Central Excise Rules,1944. On appeal against this order, the Commissioner(Appeals) vide order-in-Appeal No.122/RPR-II/06 dt.12.12.06 set aside the Additional Commissioner's order on the ground that when during stock checking either finished goods or cenvated raw-material are found short and the Deptt. demands differential duty on the finished goods/cenvated raw-material found short, in such cases, there is no requirement to modify the recorded balance of such goods as indicated in the RG.I/Form IV/RG.23 Part.I register, as what is recorded by the factory owner in the RG.I/Form IV/RG.23 Part I register has been taken by the Deptt. as the correct quantity of the goods that should have been available in the factory on that day and it is for this reason that the differential duty has been demanded for the quantity found short. The Commissioner(Appeals) observed that since the differential duty has been demanded in respect of the shortage of cenvated inputs, there was no requirement to modify the recorded balance of these inputs and therefore, as on 18.8.2000, there was no shortage. Against this order of the Commissioner(Appeals), the Deptt. has come in appeal registered in the Tribunal as E/659/2007-SM.

1.7. As regards two SCNs dt.24.12.99 and 15.2.01 issued to M/s. JSPL, the same were adjudicated by the Dy. Commissioner vide order-in-original dt.31.8.06 by which the duty demand in respect of various items of finished goods and cenvated inputs was confirmed alongwith interest and the items of finished goods and raw-material found excess were ordered to be confiscated under Rule 173Q(1) with option to be redeemed on payment of redemption fine and applicable duty. Besides this, penalty was imposed on JSPL under Section 11AC of Central Excise Act,1944 and also under Rule 173Q(1) and 226 of the Central Excise Rules. Penalty of Rs.50,000/- was imposed on Shri V.K.Jaiswal, Director of JSPL under Rule 209A of Central Excise Rules. On appeal against this order, the Commissioner(Appeals), Raipur vide impugned order-in-appeal No.8-9/RPR-II/2007 dt.29.1.07 upheld the impugned order except for the following modifications:

(1) Penalty of Rs.50,000/- on Shri V.K.Jaiswal, Director was set aside. under Rule 173Q(1)

(2) Penalty imposed on the appellant company – JSPL was reduced from Rs.50,000/- to Rs.20,000.

(3) Penalty on JSPL under Section 11AC reduced from total of Rs.3,44,007/- to Rs. 1,36,200/-. The redemption fine in lieu of confiscation in respect of the goods held to be liable for confiscation was reduced from Rs.3,50,000/- to Rs.50,000/-.

1.7.1 Against this order of Commissioner(Appeals), the appellant M/s. JSPL have filed Appeals No.E/1178-79/07-SM.

2. Hearing of this matter was held on 6.4.09, when both sides were heard. Sh. Jivesh Mahtta of S.Viyas Associates the Ld. Counsel representing JSPL and JSEP wanted to file written submissions. He was directed to file the same by 30.4.09 with a copy to the Departmental Representative and the Departmental Representative was directed to file his comments/written submissions by 21.5.09. Though the Counsel representing M/s. JSPL and JSEP filed the written submissions in respect of these three appeals on 30.4.07, Shri S.Gautam, Ld. DR filed his written submissions only on 10.7.09.

2.1. The submissions made by the Ld. Counsel for M/s. JSPL and JSEP are, in brief, as under:

(Appeals filed by M/s. JSPL)

(1) So far as cases against M/s. JSPL are concerned, at the time of officer's visit on 25.6.99 while excess was found in respect of finished goods namely C.I. socket 'B', C.I. socket 'C', C.I. brake block 6158, C.I. brake block 97022, C.I. brake block TPL 202, C.I.brake block 289 with total weight of 165.495 M.Ts., the shortage of cenvated raw-material detected in respect of Pig Iron and C.I. scull scrap was 156 M.T. The reason for shortage in the stock of raw-material and excess in the stock of above mentioned finished goods was that the records had not been updated for

quite sometime. It is clear that the above mentioned excess finished goods totally weighing 165.495 M.Ts. had been manufactured out of the raw-material weighing 156 m.ts. which had been found short. In view of this, no duty can be demanded in respect of the shortage of the raw-material.

(2) The shortage in respect of C.I. sole plates and C.I. brake blocks 605 whose total weight is about 18.3 k.g. is due to the error in the method of calculation which has been done on the basis of eye estimation.

(3) As regards the shortage of 416 pieces of back plates and clips, the same is not real shortage.

(4) As regards the stock verification on 18.8.2000, if the stock of Pig Iron and C.I. scull scrap as on 18.8.2000 is adjusted after taking into account the shortages detected in respect of these items detected on 25.6.99, the stock of these items after adjustment would be 37.12 m.t. and 117.451 m.t. respectively, as against the actual stock of 53 m.t. and 92.63 m.t. respectively and thus while there would be excess of 15.88 m.t. in respect of Pig Iron, the shortage in respect of C.I.skull scrap would be reduced to 24.78 m.t. Therefore, duty demand in respect of entire shortage had been wrongly upheld.

(5) All the goods being manufactured had been supplied to various Govt. bodies and these items were tailer made for those

Govt. organizations, In respect of supply to the Govt., there is no question of any evasion of duty.

(6) In view of the above it was pleaded that the impugned order-in-appeal No.8-9/RPR-II/07 dt.29.1.07 is not correct.

(Appeal No.E/659/07-SM)

(7) As regard Appeal No.E/659/07-SM filed by CCE, Raipur, it was pleaded on behalf of the respondent that the impugned order is correct and does not call for any interference.

2.2 Shri S.Gautam, the Ld. DR, reiterating the Commissioner(Appeals)'s findings in the impugned order-in-appeal No.8-9/RPR-II/07 dt.29.1.07 in respect of Appeal No.E/1178-79/07-SM and reiterating the grounds of appeal in the Deptt.'s appeal No.E/659/07-SM against the impugned order-in-appeal No.122/RPR-II/07 dt.12.12.06 passed by Commissioner(Appeals), made the following submissions:

(1) In respect of Appeal No.E/1178-79/07-SM, the contention of the appellant that shortage of raw-materials can be adjusted against excess of the finished goods is totally incorrect. If the excess of finished goods found in the premises were manufactured out of the raw-material found short, then the Appellant ought to have furnished the corroborative evidence like production report, issue slips of raw-material, payment to labourer etc. but they have failed to do so. Moreover, this argument is also incorrect, as for the manufacture of 165 m.t. of

finished goods much more quantity of raw-material was required to allow burning loss processing loss etc. while the shortage of Pig Iron and C.I.Scull was about 156 MT only.

(2) The contention of M/s. JSPL that shortage/discrepancy in respect of certain items of finished goods has come due to error in the method of calculation which was done on the basis of eye estimation is baseless, as physical verification was done by counting different types of finished goods as mentioned in Panchnama and the authorized representative of the company was present at the time of physical verification and he did not raise any objection.

(3) The Commissioner(Appeals) has rightly confirmed the duty demand on 153.36 M.T. of C.I.scull scrap found short in the factory of M/s. JSPL on 18.8.2000. No cogent explanation for this shortage had been given by the Company.

(4) The Commissioner(Appeals) in the case of JSPL has rightly held that shortages found on 18.8.2000 cannot be adjusted against the shortages in stock found on 25.6.99. The Appellate Authority has rightly confirmed the differential duty on the quantities found short with reference to the balance shown in the statutory record on the relevant dates i.e. as on 25.6.99 and as on 18.8.2000. Therefore, the appellant's contention for adjusting the shortages of inputs found on 18.8.2000 after taking

into account the shortage found in respect of the same inputs on 25.6.99 is not correct.

3. I have carefully considered the submissions from both the sides and perused the records. Taking up the appeal No.E/659/07-SM first in which M/s. JSEP is the respondent, the Deptt.'s case in ths appeal is that at the time of officer's visit to the unit on 25.6.99, there was shortage of cenvated inputs - 56.91 m.t. of Pig Iron and 232.125 m.t. of C.I. scull scrap; that these shortages should have been adjusted and the book balance of Pig Iron and C.I.scull scrap as on 25.6.99, should have been reduced to the extent of shortage detected in respect of these items; that this was not done, that though at the time of stock checking on18.8.2000, the physical stock of Pig Iron and C.I. scull tallied with the book balance of these items as mentioned in the record, if the shortages in respect of Pig Iron and C.I.scull detected on 25.6.99 vis-à-vis the book balance are adjusted, as on 18.8.2000, there would be excess to the extent of 56.424 m.t. and 58.475 m.t. in respect of Pig Iron and C.I.scull respectively and hence on this count, the excess inputs would be liable for confiscation and the respondent - M/s. JSEP would be liable for penalty under Rule 173Q(1). In this regard, the Commissioner(Appeals)'s view is that when during stock checking some excess vis-à-vis book balance is detected in respect of any items of finished goods or cenvated inputs, the book balance

would have to be corrected but when in course of stock checking, the goods whether finished goods or cenvated inputs are found to be less in quantity than the quantity shown in the records and on this basis duty on the goods found short is demanded, there would be no necessity for the manufacturer to correct the balance shown in the books of accounts, as the Deptt. by treating the figures mentioned in the books of account as correct, has demanded the duty. I agree with this logic of the Ld. Commissioner(appeals). In this case on 25.6.99 shortage of 56.915 m.t. of Pig Iron and 232.125 tonnes of C.I.scull was detected and on this basis, the duty in respect of these items was demanded by treating the book entries regarding quantity in respect of these items as correct. Having done so, the Deptt. cannot ask the manufacturer to correct the quantum of shortage and on this basis allege that as on 18.8.2000, there was excess stock of Pig Iron and C.I.scull to the extent of 56.424 m.t. and 58.475 m.t. respectively while as per the "unadjusted book balance as on 18.8.2000 in respect of these items, there was no shortage or excess". I, therefore, hold that the very basis of the Deptt.'s case against the respondent is wrong and I find that there is no infirmity in the impugned order-in-appeal No.122/RPR-II/06 dt.12.12.06 passed by Commissioner(Appeals), Raipur.

4. Coming to the Appeals No.E/1178-79/07-SM filed by M/s. JSPL against the Commissioner(Appeals) No.8-9/RPR-II/07 dt.29.1.07, the Deptt.'s allegation is that at the time of surprise checking on 25.6.99, there was shortage to the extent of 28 m.t., 128.58 m.t., and 416 pieces respectively in respect of cenvated Pig iron, C.I.scull scrap and back plate and clips respectively and besides this, so far as finished goods are concerned, there was excess stock to the extent of 2780 pieces, 635 pieces, 1829 pieces, 50 pieces, 37 pieces and 1709 pieces with total weight of 165.495 m.t. in respect of C.I. socket 'B', C.I.socket 'C', C.I. brake block 6158, C.I. brake block 97022, C.I. brake block TPL 202 and C.I. brake block 289 respectively and besides this, there was shortage of 6313 pieces and 656 pieces in respect of C.I.sole plate and C.I.brake block respectively. The Deptt. seeks recovery of duty in respect of the shortage of the cenvanted inputs as well as the finished goods and confiscation of the items of inputs and finished goods found excess vis-à-vis the balance recorded in the R.G.I register. Subsequently on 18.8.2000 when this unit was visited again, there was shortage of raw-material – Pig Iron and C.I. scull scrap to the extent of 12.12 m.t. and 153.36 m.t. respectively and besides this, the shortage of finished goods of 1203 pieces of anchor plates. The Deptt. in respect of the second case also seeks recovery of duty in respect of the shortage of inputs and finished goods.

4.1 So far as shortage of finished goods detected on 25.6.99 and 18.8.2000 is concerned, there is no satisfactory explanation in respect of the same. Therefore, I find no reason to interfere with the lower appellate authority's findings in respect of liability of the appellant to pay the duty alongwith interest in respect of the shortage.

4.2 As regards shortage of 12.12 MT of cenvated Pig Iron and 153.36 MT of cenvated C.I.scull scrap detected on 18.8.2000, since no explanation has been given for the same, I uphold the duty demand in respect of the same. For the reasons as discussed above, I do not accept the appellant's contention that for determining the shortage of Pig Iron as on 18.8.2000, book balance in respect of this item as on 18.8.2000 must be redetermined after adjusting the shortage detected in respect of this item on 25.6.99.

5. As regard duty demand on 28 m.t. of Pig Iron and 128.58 m.t. of C.I.scull detected on 25.6.99, I find that the total weight of the Pig Iron & C.I.scull found short is around 156 m.t. and total shortage of the finished goods – C.I.socket 'B', C.I. socket 'C', C.I.brake block 6158, C.I. brake block 97022, C.I. brake block TPL 202 and C.I. brake block 289 is 165.495 m.t. Since the shortage of Pig Iron and C.I.scull scrap is comparable with the excess of finished goods, I find merit in the appellant's contention that the finished goods found excess have been manufactured out

of the raw-materials - Pig Iron & C.I. scull scrap found short and therefore, when the duty has demanded in respect of finished products, there is no justification for demanding duty in respect of the shortage of the raw-materials. Accordingly, the duty demand amounting to Rs. 1,50,769/- in respect of shortages of Pig Iron & C.I. scull is set aside. However since there is no explanation in respect of the shortage of 416 back plate and clips, the duty demand in respect of the same is upheld. Keeping in view the circumstances of the case, the penalty on Appellant company under Section 11AC is upheld.

6. As regards the confiscation of the finished goods and cenvated inputs found excess, since no satisfactory explanation for the same is given, the same is upheld.

7. In view of the above discussion, so far as Appeals No.E/1178-79/07 are concerned, the impugned order-in-appeal stands modified to the extent as mentioned in para 5 above and so far as Appeal No.E/659/07-SM against the Commissioner(Appeals) order No.122-RPR-II/07 dt.12.12.06 is concerned, the same is dismissed.

(Pronounced in the open Court on 4/8/09)

(Rakesh Kumar)
Member Technical

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