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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/2464/2007 – SM[BR] Date 27/08/2009

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

To :
M/S SUNIL RE-ROLLERS & STEELS PVT. LTD.
560,URLA INDUSTRIAL AREA, RAIPUR (CG)

M/S SUNIL RE-ROLLERS & STEELS PVT. LTD. Appellant
Vs
C.C.E. RAIPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1083 / 2009 –SM[BR] dated 20.8.2009 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
   C.C.E. RAIPUR
   CENTRAL EXCISE BUILDING, DHAMTARI ROAD, TIKRAPARA, RAIPUR 492001.
2. Adv. / Consult
   MR.V. LAXMIKUMARAN
   B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029
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
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Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO.II

E/Appeal No.2464 /2007-SM(Br)

(Arising out of order in appeal No. 127/RPR.I/2007 dated 31.5.2007 passed by the Commissioner of Central Excise (Appeals), Raipur)

M/s Sunil Re-rollers & Steels Pvt Ltd — Appellant

Vs

CCE, Raipur — Respondent

Appeared for Appellant : Shri Ravi Raghavan, Advocate
Appeared for Respondent : Shri S.N. Srivastava, SDR

Date of Hearing: 5.8.09

Coram: Hon'ble Mr.D.N. Panda, Judicial Member

Final Order No. 1083 /2009 SM(Br)

Per D.N. Panda:

Learned Counsel Shri Ravi Raghavan submits that shortage of ingots to the extent of 43.980 MT found on investigation at the spot on 20th April, 2006 was not correct. When there was no deficiency of the stock, there cannot be allegation of clandestine removal. In defence, he submits that 18.590 MTs ingots were transported from one unit to another by two lorries. 22.885 MTs ingots were in the process of production. Without considering these two vital piece of evidence which appears at para 3-4 of the show cause notice, the authorities dealt the appellant deterrently holding that Managing Director's statement remained unrebutted without leading defence against inventory in Panchnama. But, when manufacturing record and other evidence is available to prove that there were goods existing for transport and the transport was genuine, that requires fair examination to reconcile the stock position. Similarly, he submits that the manufacturing record shows that ingots were in the process of manufacture being fed into the furnace. Accordingly, nothing can be concluded against the appellant without examination of such record showing existence of stock. In existence of the aforesaid defence, when the authorities have decided the matter against the appellant, they should not have overlooked to the basic evidence for a judicious view.

2. Learned DR submits that when panchnama was drawn, that was on the basis of facts existed at the relevant point of time. Therefore, the appellant is not entitled to any leniency what he pleaded today. He supports the order of the authorities below.

3. Heard both the sides and perused the record.

4. When the appellant came forward to explain as to the origin of the goods and destination thereof, such an evidence cannot be ignored. Authorities did not make any effort to examine whether there was actual transport of the quantity claimed by the appellants ~~was~~ and such transport was genuine and warranted in the facts and circumstances of the case. There may not be grievance further in respect of 18.590 MTs ingots if the authorities look into the matter afresh and consider the evidence that is already on record and also the evidence that is traced by the

appellants to prove plea of movement of the goods. Bonafide of the transaction need consideration.

5. Similarly manufacturing record calls for thorough examination in respect of clearance of 22.885 MTs of goods which is claimed to be in the process in the furnace. If relevant piece of evidence suggests so, the appellant deserves a fair trial. It may be stated that any inference without testing or examining evidence makes the adjudication unsustainable.

6. Accordingly, the matter above calls for remand to the learned Adjudicating Authority to weigh the evidence on record and test the same in the light of the pleading advanced as above and also defence pleaded at the initial stage of the proceeding including at the time of inventory taken on 20.4.2006 and subsequent thereto as per situations encompassed by para 3-4 of show cause notice. It is needless to mention that learned Adjudicating Authority shall grant fair opportunity of hearing to the appellant and pass a reasoned and speaking order to do justice to both sides. In the result, impugned order is set aside and the matter is remanded to the learned Adjudicating Authority.

(Order dictated and pronounced in the open Court).

(D.N. Panda)
Judicial Member

MPS*