

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/917 /2006-918 /2006 – SM[BR]

Date 12/10/2009

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

To :
CCE,CHANDIGARH
C.R.BUILDING SECTOR 17C,CHANDIGARH
CCE,CHANDIGARH

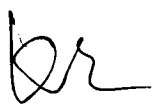
M/S CHANNI STEELS P LTD

Appellant

Vs
Respondent

I am directed to transmit herewith a certified copy of **Final order No. 1217 – 1218 / 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

1. M/S CHANNI STEELS P LTD
2. M/S CHANNI STEELS P LTD
NASRALI ROAD,MANDI GOBINDGARH

2. Adv. / Consult SHRI BIPIN GARG ADV.
B-1/1289-A, VASANT KUNJ NEW DELHI-70.

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 Publications 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 Kuni, New Delhi - 110070

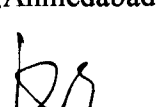
13 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026

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 (Harvana)

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**

COURT – III

CENTRAL EXCISE APPEAL NO. 917 & 918 OF 2006-SM

[Arising out of Order-in-Appeal No. 43-44/CE/CHD/06 dated 31.01.2006
passed by the Commissioner (Appeals), Central Excise, Chandigarh]

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?	
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	no
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, Chandigarh

Appellant

Vs.

1) M/s. Channi Steels (P) Ltd.,
2) Shri Vinay Bansal, Director

Respondents

Appearance:

Shri S.K. Bhaskar, D.R. for the Revenue;
Shri Atul Gupta, C.S. for the appellants

Coram:

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

Date of hearing/decision: 4th August, 2009

FINAL ORDER NO. 1217-1218/2009 ^{SM (B)} dated _____

Per P.K. Das:

The relevant facts of the case, in brief, are that the respondents are engaged in the manufacture of Steel Ingots classifiable under Heading 7206.90 of the Schedule to the Central Excise Tariff Act, 1985. On 23rd December, 2003 the Central Excise officers visited the factory of the respondents and conducted stock verification. The said officers ascertained excess stock of 15.420 M.T. of Steel Ingots involving central excise duty of Rs. 36,475/-. Representative of the respondent company failed to explain the reason for excess quantity. The original authority confiscated the excess quantity, and imposed redemption fine of Rs. 50,000/- and penalty of Rs. 10,000/- on respondent No. 1 and penalty of Rs. 5,000/- on Shri Vinay Bansal, Director, respondent No.2 herein. Commissioner (Appeals) modified the adjudication order insofar as confiscation and imposition of redemption fine on respondent No. 1 were set aside and penalty was reduced to Rs. 5,000/-. Penalty on respondent No. 2 also set aside. Hence, Revenue filed these appeals.

2. Learned D.R. on behalf of the Revenue reiterates the grounds of appeal. He submits that admittedly excess quantity of finished goods was found during stock verification and the respondents failed to explain the reason. He submits that clause (b) of Rule 25 of Central Excise Rules, 2002 provides confiscation of goods which was not accounted by the

manufacturer. He submits that no mens rea is essential to confiscate the unaccounted goods under the said rule. He relied upon the following decisions of the Tribunal:-

(a) PNP Castings (P) Ltd. vs. CCE, Lucknow –

2006 (194) ELT 250 (Tri. – Del.);

(b) CCE, Indore vs. Magnum Steels Ltd. –

2006 (197) ELT 572 (Tri. – Del.);

(c) Inter Metal Trade Ltd. vs. CCE, Indore –

2007 (209) ELT 265 (Tri. – Del.);

3. Learned C.S. on behalf of the respondents reiterates the findings of the Commissioner (Appeals). He submits that it has been alleged in the show cause notice that the respondents contravened Rule 10 of Central Excise Rules, 2002 which is pari materia to Rule 53 of erstwhile Central Excise Rules, 1944. He submits that the Tribunal in the case of Navkar Wires Pvt. Ltd. vs. CCE & C., Indore, reported in 2006 (194) ELT 245 (Tri. – Del.) held that clause (d) of Rule 25 of the Rules would apply in the case of contravention of Rule 53 & 173G of the erstwhile Rules and mens rea is required for confiscation of the goods. He also relied upon the decision of the Division Bench of the Tribunal in the case of CCE & Cus., Rajkot vs. Amrut Ceramics, reported in 2007 (209) ELT 390 (Tri. – Ahmd.).

4. After hearing both sides and on perusal of the records, it is seen from the show cause notice that the respondents contravened provisions

of Rule 10 of Central Excise Rules, 2002 insofar as they have kept 15.420 M.T. of Steel Ingots unaccounted. Rule 10 of Central Excise Rules, 2002 provides "Daily stock accounted", pari material to Rule 53 of erstwhile Rules. In the case of Navkar Wires Pvt. Ltd. (supra) in appeal No. 3056/2004 Revenue challenged the order of the Commissioner (Appeals) to the extent he has set aside the order of the adjudication order confiscating the goods seized in the factory premises under Rule 173Q(1) of the erstwhile Rules. The Tribunal observed that since contravention of Rule 53 and 173G was alleged in the show cause notice, it would attract Clause (d) of Rule 173Q(1) of the erstwhile Rules, requiring mens rea. It has been observed that in absence of requisite guilty mind contemplated by Clause (d) of Rule 173Q(1), goods could not have been confiscated. In the case of Inter Metal Trade Ltd. (supra) it has been observed that clause (d) of Rule 173Q provides for contravention of provision of rules with intent to evade payment of duty and would apply in context of other rules including Rules 53, 173G and 226. It is noted that clause (d) Rule 25 of Central Excise Rules provides confiscation of goods for contravention of provision of rules or notification issued under these rules with intent to evade payment of duty. In the present case, there is no material available that the excess quantity of goods found during stock verification was an attempt of clandestine removal of goods. Hence, confiscation of the excess quantity of goods is not justified.

5. The Division Bench of the Tribunal in the case of Amrut Ceramics (supra) held as under:-

“We find that the prime question in these appeals is whether non-entry in the RG-1 register will lead to confiscation of the goods or not? We find in these cases the only charge against the respondents is regarding non-entry in RG-1 register. No other evidence has been brought out to show that the goods were meant for clandestine removal. The question now is whether in such circumstances the goods can be confiscated or not? I find that there are contrary decisions on both sides which have very nicely been summed up by the Tribunal in the case of Shree Precoated Steel v. CCE, Pune – 2006 (203) ELT 506 (Tribunal). The sum and substance of these decisions is that mere non-entry in RG-1 register will not amount to non-accountal of the goods unless it is supported by past conduct of the assessee in removing the goods or that the raw materials used in the manufacture of the finished goods have not been accounted for or the goods have not been shown to be under process in either statutory or private records, etc. None of these ingredients are available in these cases and the Revenue has not brought out any evidence to this effect. As regards the non-maintenance of daily raw-material account the respondents have been able to explain satisfactorily that clay is the only raw material relevant for the manufacture and since it lies in heaps in the premises daily accountal is not possible. There is difference between non-accountal and non-entry in the accounts as

explained in the Tribunal's decision in the case of Commissioner of Central Excise, Ahmedabad v. Continental Chemicals – 2002 (140) ELT 116 (Tri. – Mumbai). The present case seems to be of negligence in not entering the goods in the RG-1 register rather inability to explain the non-accountal in the RG-1 register. In view of these we hold that the goods are not liable to confiscation.”

6. Learned D.R. relied upon the decision of the Tribunal in the case of PNP Castings (P) Ltd. (supra) which was passed prior to the decision in the case of Navkar Wires Pvt. Ltd. (supra). It is also noted that in the case of PNP Castings (P) Ltd. the applicability of Rule 25(d) in the context contravention of Rule 10 was not discussed. Therefore, the case law relied upon by the learned D.R. are not applicable in the present facts. In the present case, Commissioner (Appeals) after considering the facts and circumstances of the case observed that when the inputs contained in final products have been duly accounted for, there is no question of removal of excess goods clandestinely.

7. In view of the above discussion, I do not find any reason to interfere with the order of the Commissioner (Appeals). Accordingly, appeals filed by the revenue are rejected.

(Dictated & pronounced in the Open Court.)

(P.K. DAS)
MEMBER (JUDICIAL)

RK