

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/286 - 288 / 2006 -SM[BR]

Date 14/10/2009

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

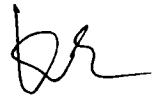
To :
M/S RAMDEVI STEELS P LTD.
INDUSTRIAL AREA
PRATAPPURA, DISTT. TIKAMGARH(MP)
M/S RAMDEVI STEELS P LTD.

Appellant

Vs
Respondent

C.C.E BHOPAL

I am directed to transmit herewith a certified copy of **Final order No. 1244 - 1246 / 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 BHOPAL

HOSHANGABAD ROAD, 48, ADMINISTRATIVE AREA, AREA HILLS, BHOPAL (M.P.) 462011

2. Adv. / Consult

SHRI BIPIN GARG ADV.

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 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

2. M/S MAN SAROWAR STEELS
MAURANIPUR ROAD PRATAPPURA DISTT. TIKAMGARH(MP)

3. M/S SUSHIL AGRAWAL
R/O-195, SUBASH GANJ, JHANSI(UP)


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 NOS. 286-288 OF 2006-SM

[Arising out of Order-in-Appeal No. 34-36-CE/BPL/2005 dated 28.8.2005 passed by the Commissioner (Appeals) Custom & Central Excise, Bhopal]

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?	N
3.	Whether their Lordships wish to see the fair copy of the order?	
4.	Whether order is to be circulated to the Departmental authorities?	Y

- 1) M/s. Ramdevi Steels Pvt. Ltd.,
- 2) M/s. Mansarowar Steels,
- 3) Shri Sushil Agarwal

Appellants

Vs.

C.C.E., Bhopal

Respondent

Appearance:

Shri Bipin Garg, Advocate for the assessee;
Shri I. Baig, SDR for the Revenue

Coram:

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

Date of hearing/decision: 20th August, 2009

FINAL ORDER NO. 1244-1246/2009 SM (BR) dated _____

Per P.K. Das:

These appeals arise out of common order and, therefore, all are being taken up together for disposal.

2. Relevant facts of the case as per records, in brief, are that M/s. Ramdevi Steels Pvt. Ltd. (Appellant No. 1) are engaged in the manufacture of M.S. Ingot classifiable under Sub-heading No. 7206.90 of the Schedule to the Central Excise Tariff Act, 1985. On 3.7.2003 at night Central Excise officers of Gwalior Division detained a truck No. UP-93-5529 loaded with 17.17 M.T. of M.S. Ingots accompanied with Bill No. 33 dated 3.7.2003 of Mansarowar Steels (appellant No. 2 herein) and bilty No. 690 dated 3.7.2003 of transporter (appellant No. 3 herein). The goods were detained as it was not accompanied with any central excise invoice. On 7.7.2003, appellant No. 2 by letter dated 7.7.2003 stated that the said goods were directly purchased by them from appellant No. 1 vide invoice No. 77 dated 3.7.2003 and submitted copy of invoice. A show cause notice dated 8.1.2004 was issued proposing confiscation of the seized goods and trucks and to impose penalties on the appellant. The original authority confiscated 17.17 M.T. of M.S. Ingots valued at Rs. 1,08,260/- and imposed redemption fine of Rs. 30,000/-. He also

confirmed the demand of duty of Rs. 26, 923/- on the said goods along with interest and imposed penalty of equal amount of duty on appellant No. 1. He also imposed penalty of Rs. 20,000/- on Mansarowar Steels, appellant No. 2 the trader. He further imposed penalty of Rs. 10,000/- on the owner of truck, appellant No. 3 along with redemption fine of Rs. 20,000/- on the seized truck.

3. Learned Advocate on behalf of the appellants submits that the goods were cleared from the factory of appellant No. 1 on 3.7.2007 at about 2 A.M. He further submits that the appellant No. 1 handed over central excise invoice to appellant No. 2 who is a trader. He also submits that the trader i.e. appellant No. 2 supplied the goods with their invoice to M/s. Magnum Steel Industries. The Central Excise officers detained goods about 300 k.m. away from the factory. On investigation, it was found that truck crossed three different check posts around 2.30 A.M. to 10 A.M. on 3.7.2003. He further submits that the dealing person prepared the invoice No. 77 dated 3.7.2003 on 2.7.2003 afternoon indicating time of removal at 11.05 A.M. of 3.7.2003 under the impression that the goods would be cleared next morning but the trader cleared the goods about 2 A.M. on 3.7.2003. He also submits that the trader produced the invoice to the central excise officers and that there is no dispute that the said truck was crossed on 3.7.2003 three different check posts. It is his contention that the goods seized on 3.7.2003 by the central excise officers are duty paid by invoice No. 77 dated 3.7.2003

and, therefore, demand of duty, confiscation of goods and imposition of penalty are not justified. He further contended that at the best it is a case of wrong mentioning of time of removal in the invoice. He relied upon the decision of the Tribunal in the case of Altos India Ltd. vs. CCE, New Delhi, reported in 1996 (85) ELT 147 (Tri.).

4. Learned D.R. on behalf of the Revenue reiterates the findings of the Commissioner (Appeals). He submits that the invoice No. 77 dated 3.7.2003 is indicating time of removal as 11.05 A.M. and it is found from the investigation that the goods were cleared about 2.15 A.M. on 3.7.2003 and, therefore, invoice cannot be related to the seized goods. He further submits that this fact is supported by the investigation that the said truck crossed three check-posts between 2.30 A.M. to 10 A.M. on 3.7.2003. He submits that it is a clear case of clandestine removal and, therefore, demand of duty, confiscation and imposition of penalty are justified. He also submits that the authorized signatory in his statement stated that the goods of invoice No. 77 dated 3.7.2005 were cleared at 11.05 A.M. He also submits that the case law relied upon by the learned Advocate would not be applicable in the present facts and circumstances of the case.

5. After hearing both sides and on perusal of the records, it is seen that on 3.7.2003 night central excise officers ^{of Customs Division} detained truck No. UP-93-5529 loaded with 17.17 M.T. of M.S. Ingots accompanied with Bill No. 33 dated 3.7.2003 of the Appellant No. 2, Builty No. 690 dated 3.7.2003

of M/s. Ragan Road Lines and weighment slip. Shri Sunil Rajput, driver of truck in his statement on 3.7.2003 stated that he had loaded the goods from the factory of the appellant No. 1 and left the factory with loaded truck between 2.15 and 3.00 A.M. of 3.7.2003. The central excise officers made investigation to the three check posts and it was found that the said truck was crossed through three check posts around 2.30 A.M. to 10 A.M. on 3.7.2003. On 7.7.2003 appellant No. 2 submitted invoice No. 77 dated 3.7.2003 of appellant No. 1 to Central Excise officers, Gwalior showing that the goods were duty paid. On verification it was found that invoice is indicating the time of removal as 11.05 hrs. on 3.7.2003 and the truck was cleared from the factory of appellant No.1 at about 3.00 A.M. on 3.7.2003. There is a difference in time of removal as mentioned in invoice and actual removal and, therefore, it has been alleged that the appellant No. 1 cleared the goods clandestinely. Shri Prakash Chandra Srivastava, authorized signatory of appellant No. 1 in his statement dated 7.7.2003 stated that the goods vide invoice No. 77 dated 3.7.2003 were cleared at 11.05 A.M. on 3.7.2003. It appears from Adjudication order that Shri Amit Agrawal, Managing Director of Appellant No. 1 in his statement dated 15.12.2003 before the Central Excise Preventive officer clarified that the consignment of 17.170 M.T. of M.S. ingots loaded in truck No. HP-93-5529 was cleared from their factory on 3.7.2003 around 02.00 to 2.30 hours covered under invoice No. 77 dated 3.7.2003. As regards, time of removal shown on invoice

No. 77 dated 3.7.2003 i.e. 11.05 A.M. of 3.7.2003, he further clarified that he had directed his staff to load and clear the goods around 10.00 hrs. on 3.7.2003, but due to some urgent work the staff left for home after preparing invoice No. 77 on the evening of 2.7.2003. Shri Jagat Singh, proprietor of Appellant NO. 2 in his statement dated 16.12.2003 stated that he had purchased 17.170 M.T. of M.S. Ingots in the capacity of trader and he had received the documents relating to the consignment in the night of 2.7.2003 and handed over his firm's bill No. 33 to the truck driver at the same time.

6. In the impugned order, Commissioner (Appeals) observed that the authorized signatory of Appellant No. 1 accepted that the goods vide invoice No. 77 dated 3.7.2003 were cleared at 11.05 A.M. from their factory and, therefore, the said invoice cannot be related with seized goods. It is revealed from the Adjudication Order that the Officer-in-charge of three check posts confirmed that the truck in question was allowed to pass between 2.30 A.M. to 10.00 A.M. on 3.7.2003 and the said truck was not passed again from the post on 3.7.2003. So, the statement of the authorized signatory of the Appellant No. 1 is contrary to the report of the check post and such statement is not reliable. The original authority observed that the statements of Managing Director of Appellant No. 1 and proprietor of Appellant No. 2 are not correct and found to be a designed plot as there is no cross reference in invoice No. 77 of Appellant No. 1 and Bill No. 33 of Appellant No. 2. It is noted that

Appellant No. 2 trader issued trader's Bill and there is no mandatory requirement to mention the central excise invoice number in the trader's Bill.

7. It is evident that no goods in the said truck was removed vide Invoice No. 77 dated 3.7.2003 at 11.05 A.M. as mentioned in the Invoice. It appears that the loaded truck as mentioned in the Invoice No. 77 was removed at about 2.30 – 3.00 A.M. of 3.7.2003. So, the findings of the lower authorities in respect of demand of duty and confiscation of goods are not maintainable. In this connection, the relevant portion of the decision of the Tribunal in the case of ALTOS India Ltd. (supra) is reproduced below:-

“4. If in fact there had been two removals, the goods covered by the gate passes of 31-7-1990 would have already been cleared and delivered. It would be easy for the department to verify this point by referring to the consignee of the goods. He could have been asked whether he got the goods in question and if so, when. This has not been done. The department has also not verified what the actual balance was on 31st July and how much the Company could have produced and whatever was produced between 31st July to 4th August, 1990. The entire records of the factory including the records maintained by the gate security which Shri Swaminathan says is independent agency show that the goods were not removed on 31st July. There is, in short, nothing in

the order of the Collector to show there has been certain quantity of goods manufactured and cleared without payment of duty earlier.

5. This Tribunal has held in *Uptron Powertronics Ltd. v. Collector of the Central Excise, Meerut* [1991 (56) E.L.T. 245 (Tribunal)= 1991 (35) ECR 3] that it cannot be concluded only on the basis of assessee's pre-dating gate pass that there has been evasion of duty and this ratio would apply to this case. In the absence of any independent evidence in addition of pre-dating of gate passes, the Collector's conclusion that the goods were sought to be removed cannot be sustained. The appellant would however, be liable to penalty under the provisions of rules as admitted by the advocate.

6. We allow the appeal to the extent that demand for duty and confiscation are set aside. The penalty imposed on the appellant is reduced to Rs.10,000/-."

8. It is seen that the same truck cannot be removed twice in the same time. There is no material available that truck number indicated in invoice No. 77 was removed at 11.05 A.M. On the other hand, it is evident from the records that the said truck cleared with the loaded goods at about 3.00 A.M. on 3.7.2003. In any event, invoice was not prepared at the time of removal of goods as admitted by the appellant and, therefore, penalty is imposable for contravention of the rules. Hence, imposition of penalty on appellant No. 2 and 3 and confiscation of truck are to be set aside.

9. In view of the above discussion, demand of duty, confiscation of seized goods and redemption fine in appeal No. E/286/06 are set aside. Penalty is reduced to Rs. 10,000/-. Appeal No. 287/2006 & 288/2006 are allowed with consequential relief.

(Dictated & pronounced in the Open Court.)

(P.K. DAS)
MEMBER (JUDICIAL)

RK