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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/3177/2007,118 /2008 – SM[BR] Date 04/12/2009

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

To :
C.C.E. KANPUR
117/7, SARVODAYA NAGAR, KANPUR 208005.

C.C.E. KANPUR Appellant
Vs
M/S BANSAL WIRE PVT LTD Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1488-1489 / 2009 –SM[BR] dated 2.12.2009 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 BANSAL WIRE PVT LTD
BHAUNTI, KALPI ROAD, KANPUR.
2. Adv. / Consult SHRI ASHUTOSH AGARWAL ADV.
M/S BANSAL WIRES PVT.LTD.;--------------

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
2. M/S BANSAL WIRE PVT LTD
BHAUTI, KALPI ROAD, KANPUR

Assistant Registrar
(SM Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-III

Date of hearing/decision: 2.12.2009

Central Excise Appeal No.118 of 2008-SM

Arising out of the order in appeal No.339-CE/APPAL/KNP/2007 dated 31.10.2007 passed by the Commissioner (Appeals), Customs & Central Excise, Kanpur.

Central Excise Appeal No.3177 of 2007-SM

Arising out of the order in appeal No.339-CE/APPAL/KNP/2007 dated 31.10.2007 passed by the Commissioner (Appeals), Customs & Central Excise, Kanpur.

For Approval and Signature:

Hon'ble Shri M. Veeraiyan, Member (Technical)

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	Yes
2	Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3	Whether their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

M/s Bansal Wires Private Limited ... Appellant

Vs.

C.C.E., Kanpur .... Respondent

C.C.E., Kapur .... Appellant

Vs.

M/s Bansal Wires Private Limited .... Respondent

Appearance:

Shri Ashutosh Agarwal, Advocate for the appellant-assessee
Shri R.K. Saini, Authorized Departmental Representative (SDR) for the Revenue
Coram: Hon'ble Mr. M. Veeraiyan, Member (Technical)

Oral Order No. 1488 - 1489 / 2009 SM (B)

Per M. Veeraiyan:

Appeal No.E/118/08 is by the party and Appeal No.E/3177/07 is by the Department against the same order of the Commissioner (Appeals) No. 339-CE/APPAL/KNP/2007 dated 31.10.2007.

2. Heard both sides.

3. The relevant facts, in brief, are that the officers visited the manufacturer's premises on 14.3.05 and conducted stock verification of finished goods. Instead of stock of 127.305 MT of wires as per records, the physical stock was found to be 115.155 MT. This stock verification was done in the presence of two independent witnesses, authorised signatory of the company and the Director of the company. The panchnama bears the signature of the Director of the company. On 14.3.05 itself, the statement of Director was taken and he has admitted the shortage as mentioned in the panchnama. However, a letter dated 16.3.05 to the Commissioner,Central Excise was sent alleging that no weighment was undertaken. On the basis of investigation, show cause notice was issued and the original authority by an order dated 20.6.07 confirmed the demand of duty amounting to Rs.54,529/- along with interest and imposed equal penalty under Section 11AC and also imposed a penalty of Rs.25,000/-under Rule 25 of the Central Excise Rules, 2002. The party filed appeal against the order of the original authority before Commissioner (Appeals). Commissioner (Appeals) vide impugned order dated 31.10.07 upheld the demand of duty and interest; he set aside the penalty under Section 11AC; he sustained penalty under Rule 25. The party is in appeal challenging the demand of duty, order for recovery of interest and imposition of penalty under Rule 25. The Department is in appeal seeking to restore the penalty imposed by the original authority under Section 11AC.

4. Learned Advocate for the assessee submits that there was no actual weighment of the stock. The officers were only for about 2 ½ hours in the factory. Three weighing scales were inside the factory and one of them has a capacity of weighing 3 MT at a time and other two can each weigh only 500

kgs. at a time. One of the panchnama witnesses filed affidavit dated 21.3.06 stating that there was no physical weighment.

5. Learned DR submits that the panchnama clearly indicates that the officers were in the factory premises from 12.10 hours to 21.30 hours and that there were three scales in the factory. The weighment has been done in the presence of independent witnesses, Director and the authorised signatory. The letter dated 16.3.05 should not be given cognisance. The affidavit filed by one panchnama witness also does not change the situation. Since the shortage has been admitted, it must be presumed that there was clandestine removal and penalty under Section 11AC should be restored as imposed by the original authority.

5. I have carefully considered the submissions from both sides and perused records. Weighment as per panchanama has been done from 12.10 hours to 21.30 hours on 14.3.05. I also find that Director has signed the panchnama and he has also given a statement on the same day admitting the shortage. Therefore, the letter dated 16.3.05 and belated affidavit by one of the panchnama witnesses have been rightly rejected by the lower authority. Therefore, the shortage of finished goods stands confirmed. However, every case of shortage cannot be treated as a case of clandestine removal. The manufacturer has obligation to account for the goods manufactured and entered in the production records and in the absence of satisfactory explanation, they were liable to pay duty. But the charge of alleged clandestine removal requires some more evidence corroborating such clandestine removal. In this case, no such evidence either in the form of private records relating to clandestine removal or admission statement of the authorised signatory or the Director about clandestine removal or any other such evidence has been relied upon.

6. In view of the above, the charge of clandestine removal as sought to be canvassed by the Department cannot be upheld. In view of substantial discrepancy in the stock as per accounts and the physical stock , the manufacturer has also failed to maintain proper accounts.

7. In the light of the above, the appeals are disposed of as follows:

a) Appeal of the Department seeking restoration of penalty under Section 11AC is rejected.

b) Demand of duty amounting to Rs.54,529/- along with interest is upheld.

c) Penalty of Rs.25,000/- sustained under Rule 25 is modified as penalty of Rs.5000/- under Rule 27 of the Central Excise Rules.

(M. Veeraiyan)
Member (Technical)