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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/2548/2007 – SM[BR] Date 16/12/2009

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

To :
M/S RAJASTHAN METAL INDUSTRIES
C-11,INDUSTRIAL ESTATE, 22, GODAM, JAIPUR

M/S RAJASTHAN METAL INDUSTRIES Appellant
Vs
C.C.E. JAIPUR I Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1527 / 2009 –SM[BR] dated 10.12.2009 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
   C.C.E. JAIPUR I
   N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.
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 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 AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Excise Appeal No.2548 of 2007-SM Branch

[Arising out of Order-in-Appeal No.197/GRM/CE/JPR-I/2007 dated 27.06.2007 passed by the Commissioner of Central Excise (Appeals), Jaipur]

Date of Hearing/ Decision:10.12.2009

For approval and signature:

Mr. M. Veeraiyan, Member (Technical)

1. Whether Press Reporters may be allowed to see CESTAT (Procedure) Rules, 1982.		Yes
2. Whether it should be released under Rule 27 of the 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. Rajasthan Metal Industries ...Appellant

(Rep. by Shri Atul Gupta, Co. Secretary)

Vs.

CCE, Jaipur-II ....Respondent

(Rep. by Shri V.K. Saxena, Jt. CDR)

CORAM: **Hon'ble Mr. M. Veeraiyan, Member (Technical)**

Final Order No..1527/2009 SM(Br)..../Dated:10.12.2009

Per M. Veeraiyan:

This is an appeal against the order of the Commissioner (Appeals) No. 197/GRM/CE/JPR-I/2007 dated 27.06.2007

2. Heard both sides.

3. The appellant is a manufacturer of copper wires and they have also undertaken, in addition to their own manufacture, job work in respect of the same items. In respect of their own manufacture, the appellant submits and accepts that there was some burning loss and some quantity of scrap arose out of manufacture. However, in respect of job work done, they have returned the quantity of finished product equal to the quantity of raw materials received by them from the principal- manufacturer. The principal-manufacturer is in the duty paying sector and they were paying excise duty on the finished products and they have availed Cenvat credit and they have also sent the materials on which Cenvat credit taken to the appellant on challan prescribed under Notification No.214/86 dated 25.03.86. It is admitted by the appellant that as some principal-manufacturers desired that the entire quantity of wire manufactured out of the raw materials be supplied by them, the said appellant in order to comply with the conditions of the contract used their raw material of about 1.1% of the quantity received ~~recovered~~ by them from their own stock and supplied the entire quantity; cost of such added raw materials was being included in the job work charges recovered from the principal-manufacturers.

4. Ld. Co. Secretary is not contesting the issue on merits. He accepts that whatever manufactured out of inputs supplied by the manufacturer was returnable and the scrap arising out of such job work was also to be

returned to the principal-manufacturers or to be cleared on payment of duty. Whatever manufactured out of excess raw materials which was out of their own stock of inputs and given to the principal-manufacturers have to suffer duty. However, whatever duty was paid on such materials would be available as credit to the principal-manufacturers and, therefore, it was a revenue neutral exercise and does not involve any intention to evade excise duty. Therefore, invocation of extended period of limitation for demand and imposition of penalties is not warranted.

5. Regarding a separate demand on the proportion of scrap on job work basis, he submits that the same is not justified. The entire scrap including scrap arising out of materials processed on job work basis have been duly accounted for and cleared on payment of duty. The 0.6% scrap adopted was based on the entire scrap generated by them.

6. Ld. Jt. CDR submits that the material returned under challan prescribed under Notification No.214/86 cannot exceed the goods manufactured out of materials supplied by the principal-manufacturer. Whether the principal-manufacturer pays duty or not cannot be decided at this end. He supports the order of the Commissioner (Appeals). He reiterates the findings relating to the scrap.

7. I have carefully considered the submissions from both the sides. Ld. Co. Secretary is not disputing the demand relating to excess goods supplied using their own materials. He is only pleading revenue

neutrality. The issue of revenue neutrality may be relevant only for the purpose of imposing penalty. Therefore, I uphold the demand of duty amounting to Rs.33,002/- insofar as the same relates to the excess goods supplied out of their own materials. However, the plea of Company Secretary that the scrap generated by the appellant unit in respect of both on their own manufacture and manufacture on job work basis stands accounted and cleared on demand of duty is not refuted with evidence and, therefore, the same acceptable.

8. In view of the above, I uphold the demand of Rs.33,002/-. The rest of the demand is set aside. In the given facts and circumstances of the case and taking into account the plea of revenue neutrality, I do not find any justification in sustaining the penalty. Penalties are set aside.

9. The appeal is disposed of as above.

Order dictated & pronounced in open court on 10.12.2009.

(M. Veeraiyan)
Member (Technical)

Ckp.