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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

Date 04/11/2009

Appeal No. E/2702/2007 – SM[BR]

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 RAJ RATAN CASTING (P) LTD — Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1357 / 2009 - **SM[BR]** dated 14.9.2009 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 RAJ RATAN CASTING (P) LTD
   E-23-32, UPSIDC INDUSTRIAL AREA, ORAI(UP)
2. Adv. / Consult SHRI K.K. ANAND ADV.
   A-5, BASMENT LAJPAT NAGAR-III
   NEW DELHI-24.

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 & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI

COURT – III

CENTRAL EXCISE APPEAL NO. 2702 OF 2007-SM

[Arising out of Order-in-Appeal No. 271-CE/APPL/KNP/2007 dated 31.07.2007 passed by the Commissioner (Appeals), Customs & Central Excise, Kanpur]

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

Commissioner,
Customs & Central Excise, Kanpur — Appellant

Vs.

M/s. Raj Ratan Casting (P) Ltd., — Respondents

Appearance:

Shri Sunil Kumar, JDR for the Revenue;
Ms. Asmita Nayak, Advocate for the respondents

Coram:

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

Date of hearing/decision: 14th September, 2009

FINAL ORDER NO. 1357/2009 **dated** SM (Br)

Per P.K. Das:

Revenue filed this appeal against order of the Commissioner (Appeals) whereby adjudication order was set aside and the appeal filed by the respondents was allowed.

2. The relevant facts of the case, in brief, are that the respondents were engaged in the manufacture of M.S. Ingots classifiable under Chapter 72 of the Schedule to the Central Excise Tariff Act, 1985. On 3.5.2005 Central Excise officers visited the respondent's factory and conducted stock verification. The said officers found shortage of finished goods involving central excise duty of Rs. 1,04,456/-. The said officers recorded the statement of Shri Jai Kishan Khatri, authorized signatory who could not explain the reasons for shortage. Original authority confirmed the demand of duty of Rs. 1,04,456/- and imposed penalty of equal amount under Section 11AC of the Central Excise Act, 1944 and also imposed penalty of Rs. 40,000/- under Rule 25 of the Central Excise Rules, 2002 along with interest. Commissioner (Appeals) set aside the adjudication order. Hence, Revenue filed this appeal.

3. Learned JDR on behalf of the Revenue reiterates the grounds of appeal. He submits that the authorized signatory of the respondent company accepted the shortage and failed to explain the reason for

shortage. He submits that summons were issued on three occasions, but the respondents failed to appear. He also submits that the respondents did not file any reply to the show cause notice. Thus, the entire facts indicate that the goods were clandestinely removed. He also submits that the Commissioner (Appeals) set aside the demand on the ground that the shortage is 3.9%. It is his contention that there is no provision for setting aside the demand on the shortage on the basis of quantum. He relied upon the decision of the Tribunal as under:-

(a) CCE, Chandigarh vs. Vimal Alloys Ltd., -
2004 (168) ELT 33 (Tri. – Del.);

(b) Bharat Plast vs. CCE, Valsad –
2004 (168) ELT 204 (Tri. – Mumbai)

4. Learned Advocate on behalf of the respondents reiterates the finding of the Commissioner (Appeals). She submits that there is no material available to prove clandestine removal of the goods. She further submits that there was no shortage of the goods. It is her contention that physical verification of huge stock of Ingots was done by the officers on the basis of eye estimation and no verification was done by ascertaining actual weight of ingots. She also submits that due to unavoidable circumstances the respondents failed to appear in response of the summons, which cannot be treated as ground for clandestine removal. She further submits that the case law relied upon by the learned JDR in the case of Viman Alloys Ltd. (supra) is an ex-parte decision.

5. After hearing both sides and on perusal of the records, it is revealed from the adjudication order that Shri Jai Kishan Khartri, authorized signatory of the respondents in his statement dated 3.5.2005 stated that he would tell the reason for shortage of goods after consulting Shri Saurabh Jain. It is seen that the Central Excise officers issued summon on 27.6.2005, 7.7.2005 and 8.8.2005 to Shri Sunil Khatri, Director of the respondent company to appear, who neither appeared before the Superintendent of Central Excise nor submitted any reply/ explanation in respect of shortage of M.S. ingots. It is also noticed that the respondents had not filed any reply to the show cause notice. Thus, the contention of the learned Advocate that stock taking was conducted on the basis of eye estimation cannot be accepted and the submission of the learned Advocate in this regard is not sustainable. The contention of the learned Advocate is that there is no material to show clandestine removal of the goods, I find that central excise officers issued summons on three occasions but they did not response to summons and failed to explain the reason for shortage and even they did not file reply to show cause. It appears that the respondent deliberately avoided to explain the reasons as the goods were clandestinely removed. Hence, demand of duty and imposition of penalty under Section 11AC are justified. I agree with the submission of the learned JDR that quantum of shortage may be negligible but it cannot be ground for setting aside the demand of duty.

6. In view of the above discussion, order of the Commissioner (Appeals) is set aside. Order of the original authority is restored and modified insofar as demand of duty and imposition of penalty under Section 11AC of the Central Excise Act along with interest are upheld. Penalty under Rule 25 of the Rules is set aside. Appeal filed the Revenue is allowed in the above terms.

(Dictated & pronounced in the Open Court.)

(P.K. DAS)
MEMBER (JUDICIAL)

RK