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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/3136/2009,3155/2009 – SM[BR] E / CO / 74 / 2010-SM[BR]** Date **09/06/2011**

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

To :
M/S SWAROOP ROLLOING MILLS LTD.

VILLAGE-SALARPUR,
TEHSIL JANSATH,
DISTT. MUZAFFARNAGAR (U.P.)

M/S SWAROOP ROLLOING MILLS LTD. Appellant

Vs

C.C.E. MEERUT I Respondent

I am directed to transmit herewith a certified copy of **Final order No. 304 – 305 /2011-SM[BR]** dated 31.5.2011 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. MEERUT I
EXCISE CHOWK,OPPOSITE
CHOUDHARY CHARAN SINGH
UNIVERSITY MANGAL PANDAY
NAGAR, MEERUT - 250005.
2. Adv. / Consult
MR.AALOK ARORA, ADVOCATE
82-MISSION COMPOUND, SAHARANPUR-247001 (U.P.)
3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi -
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

ने. **M/S SWAROOP ROLLING MILLS LTD.**
VILLAGE-SALARPUR, TAHSIL-JANSATH,
DISTT. MUZAFFARNAGAR (U.P.)

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. I

Excise Appeal No. 3136 , 3155 of 2009-SM(BR) & E/CO/74/2010 SM

[Arising out of Order-in-Appeal No. 113-CE/MRT-I/2009 dated 31.8.2009 passed by the Commissioner of Central Excise (Appeals), Meerut I]

For approval and signature:

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

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1. Whether Press Reporters 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 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

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<u>E/A/3136/2009</u>

M/s. Swaroop Rolling Mills Ltd. — Appellants

Vs.

Commissioner of Central Excise
Meerut I — Respondent

<u>E/A/3155/2009 & E/CO/74/2010</u>

Commissioner of Central Excise
Meerut I — Appellants

Vs.

M/s. Swaroop Rolling Mills Ltd — Respondent

Appearance:

Shri Alok Arora, Advocate for the Appellants -assessee
Shri S.K. Bhaskar, DR for the Respondent-Revenue

Date of Hearing/decision : 31.05.2011

Final **ORAL ORDER NO.** 304-305/2011 SM (BR)

Per M. Veeraiyan:

1.1 Appeal No. E/3136/2009 is by M/s. Swaroop Rolling Mills Ltd. against the order of the Commissioner (Appeals) no. 113/CE/MRT-I/2009 dated 31.8.09.

1.2 Appeal No. E/3155/2009 is by the department against the same order of the Commissioner (Appeals) seeking enhancement of penalties equal to duty involved. Cross Objection No. 74/2010 is connected to this appeal..

2. Heard both sides extensively.

3. The factory of the appellant -assessee was visited by the officers on 4.1.2008. Verification of stock revealed shortage of 81.375 MT of MS ingots (stock as per RG I was 543.585 MT and the physical stock which was available was 462.210 MT). Verification of stock of MS round, MS Square MS Roll did not reveal any discrepancy. However, there was excess of 139.095 MT of MS bars (quantity as per RGI was 760.19 MT and the physical stock available was 899.285 MT). The authorized signatory cum Director Shri Sandeep Garg in his statement dated 4.1.08 admitted the shortage of raw material and excess of finished goods and undertook to pay the duty on short found inputs.

The duty amounting to Rs. 2,48,096/- representing cenvat credit on short found raw materials was deposited on 9.1.2008. A letter dated 10.1.2008 was issued under the signature of another Director expressing doubt about the manner of stock taking. In the said letter it was mentioned that "it is not known how the quantity of excess/shortage arrived at". It also mentioned that short found MS ingots were used in the final products which was ascertained to be excess by the officers. Original authority passed the following order:

> "1. I order to confiscate the seized goods under Rule 25 of Central Excise Rules, 2002. Option is given to the party to redeem the said goods on payment of redemption fine of Rs.8.00 lacs (Rupees Eight lacs only) and directed that the said goods may be cleared after payment of appropriate duty.
>
> 2. I appropriate the duty debited in respect of raw material found short amounting to Rs.2,48,096.00 (Rupees two lacs eighty thousand ninety six only) towards the Cenvat involved in the shortage detected.
>
> 3. I impose penalty of Rs.4,97,426.00 (four lac ninety seven thousand four hundred twenty six only) M/s. Swaroop Rolling Mills Ltd. under Rule 25(1) of Central Excise Rules, 2002 read with Section 11AC of the Act.
>
> 4. I impose penalty Rs.2,48,096.00 (two lac forty eight thousand ninety six only) M/s. Swaroop Rolling Mills Ltd., under Rule 15(2) of CENVAT. "

3.2 On appeal by the party, the Commissioner (Appeals) upheld the demand of duty on unexplained shortage of inputs. She also upheld the confiscation of excess found finished goods but allowed redemption on payment of fine of Rs.8 lakhs. However, the penalty of

Rs.2,48,096/- in respect of shortage of raw materials was reduced to Rs. 2 lakhs. The penalty of Rs. 4,97,426/- in respect of finished goods was reduced to Rs. One lakh. The appellant assessee is challenging the order of confiscation, demand of duty and imposition of penalties. The department is in appeal seeking enhancement of penalty as imposed by the original authority.

4. Learned Advocate submits that the shortage of finished goods was clearly explained by them vide their letter dated 10.1.2008. The payment of duty on the alleged shortage of inputs was under protest. The production found in excess included the days' production. Therefore, the violation, if any, is only technical in nature and the confiscation even if is upheld, redemption fine should be reduced drastically.

5. The learned DR reiterating the grounds of appeal of the department submits that this is a case of shortage of inputs and excess of finished products and clearly shows the intention of suppressing the production and then clearing such suppressed production clandestinely.

6. I have carefully considered the submissions from both sides. The shortage of MS ingots was substantial amounting to 81.375 MT. Similarly, the stock of finished goods found in excess was also substantial. The shortage of raw materials together with excess of finished goods is a tell-tale mark of clandestine activities. However, the explanation offered by the appellants vide their letter dated 10.1.08 that 81.375 MT of short found goods valued at about Rs.15 lakhs were

utilized for manufacture of goods found in excess deserves to be accepted. That leads to a clear admission of improper maintenance of account relating to MS ingots on which cenvat credit has been taken. Therefore, the raw material so issued without accounting is liable for confiscation. The excess of finished goods stands admitted by the authorized signatory in his statement dated 4.1.08. This stands reaffirmed in his subsequent statement given on 16.6.08. In subsequent statement dated 16.6.08, an explanation was offered that " the recovery of excess goods may be due to manufacture of MS bars which could not be recorded in the stock register. The MS bar might have been manufactured from MS ingots found short". The statements of Shri Sandeep Garg dated 4.1.08 and 16.6.08 are not retracted. Letter dated 10.1.08 signed by another Director also did not claim that there was no discrepancy in the stock. It was merely claimed that it was not known how the quantity of excess goods / shortage was arrived at. Apparently, the Director who signed this was not aware of the method of stock taking. However, the authorized signatory who has given statement on 4.1.2008 and has repeated the same on 16.6.08 has not expressed any doubt about stock taking. |Therefore, it emerges that there was shortage of raw material which was claimed to have been utilized for manufacture of excisable goods and which were found to be in excess. The assessee is required to maintain the production records on a day today basis. Failure to do so clearly attracts penal action in terms of Rule 25 (1)(b) of the Central Excise Rules. The short found inputs were claimed to have been used for manufacture of excess found finished goods, and the said claim merits acceptance in the absence of other evidence to the contrary.

7. Taking the entire facts and circumstances of the case into account, the appeals are disposed of as follows:-

a) demand of duty on short found inputs are set aside.

b) Confiscation of the excess found final products valued at Rs. 30,18,361.50 is upheld. However, considering the nature of violation, redemption fine imposed is reduced from Rs. 8 lakh to Rs.3,00,000/- (The Rupees three lakh only). The option for redemption fine shall be exercised within 30 days from date of receipt of this order, failing which the department shall be free to take over and dispose of the goods as per law.

c) Considering the nature of violation in improper maintenance of accounts relating to MS ingots, a raw material used for the finished goods, the penalty sustained by the Commissioner (Appeals) amounting to Rs.2 lakhs is reduced to Rs.1,00,000/- (Rupees One lakh only).

d) Penalty of Rs. One lakh imposed in respect of violation relating to finished goods is upheld.

8. The appeal of the department seeking enhancement of penalty is rejected. Cross Objection also disposed of.

(M. Veeraiyan)
Member(Technical)

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