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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/2457/2009 – SM[BR]** Date **07/07/2011**

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

To :
M/S PRECISION TOOLS & CASTING INDUSTRIES LTD.
LUCKNOW PLANT-I, MALVIYA NAGAR, AISHBAGH,
LUCKNOW.

M/S PRECISION TOOLS & CASTING INDUSTRIES LTD. Appellant

Vs

C.C.E. LUCKNOW Respondent

I am directed to transmit herewith a certified copy of **Final order No. 383 / 2011-SM[BR]** dated 2.6.2011 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. LUCKNOW
7-A, ASHOK MARG, LUCKNOW.

2. Adv. / Consult
MR.KAPIL VAISH
B-51, BUTLER PLAZA, 95, CIVIL LINES, BAREILLY.

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 (Harvana)
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

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. IV
Excise Appeal No. 2457 of 2009 (SM)

[Arising out of the Order-in-Appeal No. 123-CE/LKO/2009 dated 25/05/2009 passed by The Commissioner (Appeals), Customs & Central Excise, Lucknow.]

For Approval and signature :
Hon'ble Shri Rakesh Kumar, Member (Technical)

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?	:
3.	Whether their Lordships wish to see the fair copy of the order?	:
4.	Whether order is to be circulated to the Department Authorities?	:

M/s Precision Tools & Casting Ltd. Appellant

Versus

CCE, Lucknow Respondent

Appearance

Shri Kapil Vaish, Consultant (C.A.) – for the appellant.

Mrs. Rimjhim Prasad, Authorized Representative (SDR) – for the respondent.

CORAM : **Hon'ble Shri Rakesh Kumar, Member (Technical)**

DATE OF HEARING : 02/06/2011.

Final Order No. 383/2011 SM(BR) Dated : ____________

Per. Rakesh Kumar :-

The appellant are manufacturers of goods falling under Chapter 73 and 86 of Central Excise Tariff. They avail the facility of Cenvat credit of duty paid on inputs under the provisions of Cenvat Credit Rules. **On 14/8/02 when their** factory was visited by Jurisdictional Central Excise officers and they check the stock of finished goods and raw material in respect of which Cenvat credit had been taken, shortage of 2162 pieces of alloy steel castings weighting 410 kg. and involving duty of Rs. 16,777/- was detected. Beside this, the shortage of 246 kg. of Ferro Chrome Low Carbon involving duty of Rs. 2,637/- was detected. The appellant's representative present in the factory at that time, accepted the shortage. **However, on 17/8/02 one Shri R.K. Kaul**, Factory Manager addressed a letter to the Deputy Commissioner, Central Excise informing him that there was no shortage of

2162 pieces of alloy steel castings as the same were available in the factory, that the same were meant for export and even prepared as per the specifications of the overseas buyers at the time of officer to the factory, the same had been transferred to the inspection department for the final inspection. This letter also requested the officers to verify the record which are available in the factory. However, there was no response of the department to this letter and **subsequently the department on 7th August 2007 issued a show cause notice for demand** of central excise duty amounting to Rs. 16,477/- on the shortage of alloy steel casting and demand of Rs. 2,637/- on the shortage of Ferro Chrome Low Carbon alongwith interest and also for imposition of penalty on the appellant under the provisions of Rule 25 of the Central Excise Rules, 2002 readwith Section 11AC of the Central Excise Act and also Rule 13 of the said Rules readwith Section 11AC of the Central Excise Act, 1944. The matter was adjudicated by the Assistant Commissioner and though before the Assistant Commissioner, it was pleaded that there was no shortage of 2162 pieces of alloy steel casting as the same were available in the factory for final inspection and intimation in this regard had been given to the department vide letter dated 17/8/02, this plea was not accepted. The Assistant Commissioner confirmed the duty demand alongwith duty as well as Cenvat credit demand as well as interest and imposed penalty on them. On appeal to Commissioner (Appeals), the Assistant Commissioner's order was upheld vide order-in-appeal dated 11/5/09. Against this order of the Commissioner (Appeals), the present appeal have been filed.

2. Heard both the sides.

2.1 Shri Kapil Vaish, Consultant, the learned Counsel for the appellant, pleaded that there was no shortage of alloy steel casting alleged to be short, the appellant under their letter dated 17/8/02 had intimated to the department that the same were meant for export and were lying in the inspection in the export section of the factory for final inspection, that the letter also requested the officers to visit the factory and verify the stock, that there was no response to this letter from the appellant, that in view of this, the department cannot allege that there was shortage of 2162 pieces alloy steel casting when the same were available in the factory at the time of officer's visit and subsequently when the department officers were requested to verify and they did not come for the same, that as regards the shortage of 246 kg. of Ferro Chrome Low Carbon, it is a small quantity compared to the quantity being handled, that there is no evidence of clandestine removal, that neither extended period under proviso to Section 11A (1) is available to the department nor penalty under Section 11AC is imposable and that in view of this, the impugned order-in-appeal confirming Cenvat credit demand and imposition of penalty is not correct.

2.2 Mrs. Rimjhim Prasad, the learned Departmental Representative, defended the impugned order by reiterating the findings of the Commissioner (Appeals) and pleaded that the stock taking of the finished goods and cenvated raw materials had been done in presence of the representative of the appellant and at that time the shortages of alloy steel castings 2162 pieces weighting of 410 kg. and involving duty of Rs. 16,777/- and shortage of 246 kg. of Ferro Chrome Low Carbon involving duty of Rs. 2,637/- has been accepted, that the letter dated 17/8/02 intimating that the 2162 pieces of alloy steel castings are available in the factory and there is no shortage is only an afterthought and in view of this, there is no infirmity in the impugned order.

3. I have carefully considered the submissions from the both the sides and perused the record.

4. So far as the allegation of shortage of 2162 pieces of alloy steel casting and the duty demand in respect of the same is concerned, while at the time of stock taking, this shortage has been accepted, it is on record that the appellant under their letter dated 17/8/02 had intimated the Jurisdictional Deputy Commissioner that 2162 pieces of alloy steel castings alleged to be short are available in the factory and the same are lying in the export section for final inspection and by this letter, the appellant also requested the Deputy Commissioner to get this stock verified. However, there are absolutely no response to this letter from the appellant. When the appellant claimed that 2162 pieces of alloy steel casting are available in the factory at least this claim should have been verified. But absolutely nothing has been done. In view of this, allegation that 2162 pieces of alloy steel castings have been found short

and have been clandestine removed and the duty demand based on the same is not sustainable and the impugned order upholding the duty demand in respect of the same and imposing penalty is liable to be set aside. As regards, the shortage of 246 kg. of cenvated Ferro Chrome Low Carbon, the same had been accepted at the time of stock taking and except for pleading that it is a small quantity as compared to the total quantity being handled no other explanation had been given. In view of this, I uphold the impugned order confirming the Cenvat credit demand in respect of Ferro Chrome Low Carbon. However, I find that in respect of shortage of 246 kg. of Ferro Chrome Low Carbon involving Cenvat credit of Rs. 2,637/- penalty of equal amount under Rule 15 (1) as well as Rule 15 (2) of Cenvat Credit Rules has been imposed which is not correct. In view of this, the penalty of Rs. 2,637/- under Rule 15 (2) is set aside and penalty under Rule 15 (1) is upheld. Accordingly, the Commissioner (Appeals)'s order confirming the duty demand alongwith interest in respect of shortage of Alloy Steel Castings and imposing penalty of equal amount on this ground under Section 11AC is set aside. However, the impugned order with regard to shortage of 246 kg. is upheld except for modification that penalty would be imposable only under Rule 15 (1) of Cenvat Credit Rules, 2004 not under Rule 15 (2) of Cenvat Credit Rules also. The appeal stands disposed of, as above.

(Dictated and pronounced in open court.)

(Rakesh Kumar)
Member (Technical)

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