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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/2702/2009 – SM[BR]** Date **21/07/2011**

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

To :
M/S POPULAR IRON & STEEL CO.
SHAHGANJ, JAUNPUR (U.P.)

M/S POPULAR IRON & STEEL CO. Appellant

Vs

C.C.E ALLAHABAD Respondent

I am directed to transmit herewith a certified copy of **Final order No. 409 / 2011-SM[BR]** dated 12.7.2011 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 ALLAHABAD
38,M.G.MARG, CIVIL LINES,
ALLAHABAD

2. Adv. / Consult
MR.RAJESH CHHIBBER
FA/9, NEW KAVI NAGAR, GHAZIABAD

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

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R.K.Puram, New Delli,

Court No.IV

Date of hearing & decision : 12. 07. 2011

Ex. Appeal No.2702/09-SM

(Arising out of O/A No. 81-CE/ALLD/2009 dt. 22.06.09 passed by Commr.of Central Excise (Appeals), Allahabad)

For approval and signature:

Hon'ble Shri Ashok Jindal, Member (Judicial)

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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? :
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? :
3. Whether His Lordship wishes to see the fair copy of the Order? :
4. Whether Order is to be circulated to the Departmental Authorities? :

M/s Popular Iron & Steel Co. ...APPELLANT(S)

VERSUS

CCE, Allahabad

RESPONDENT (S)

APPEARANCE

Rep. by Shri Rajesh Chibber, Adv. for the Appellant (s)
Rep. by Shri Fateh Singh, DR for the Respondent

CORAM:

Hon'ble Shri Ashok Jindal, Member (Judicial)

Final Oral Order No. 409/2011 SM(BR)

Per Shri Ashok Jindal :

By this appeal, the appellants are challenging the impugned order confirming confiscation of goods which was allowed to be redeemed on payment of redemption fine of Rs.5,00,000/- and penalty of Rs.4,16,976/- under Rule 25 of Central Excise Rules, 2002.

2. Brief facts of the case are that the appellants are engaged in the manufacture of M. S. Ingots, M.S.Round, M.S.Strips, M.S.Sheets etc. They are availing exemption under Notification 8/03-CE dated 1.3.03 for the period 2006 and 2007.

3. On the basis of intelligence, the factory premises of the appellants was visited and it was found that the finished goods were not recorded in their RG I Register. Therefore, a case has been made out against the appellants as the appellants have not entered the finished goods in their RG I Register with an intention to remove clandestinely. The goods were seized and certain records were also taken into the custody. Thereafter, a show-cause notice was issued to the appellants with a proposal to confiscate the goods and to impose the penalty under Rule 25 of the Central Excise Rules, 2002. The show-cause notice was adjudicated. The goods were confiscated and allowed to be redeemed on payment of fine. A penalty of Rs.1,50,000/- was imposed on the appellants. The said order was challenged by the appellants before the Commissioner (Appeals). The Commissioner (Appeals) considered the submissions of the appellants that the finished goods were entered in Form-4 Register and as, the appellants are availing SSI exemption and they are manufacturing

dutiable as well as exempted goods. Therefore, these goods could not be entered in RG I Register but they are duly entered in Form 4 Register. Therefore, the Commissioner (Appeals) remanded the matter to the adjudicating authority to verify whether these goods are properly entered in Form 4 Register or not and if the goods are liable for confiscation, then these goods shall be cleared on payment of duty and to impose penalty accordingly. The appellants challenged the said order on the ground that as the appellants are availing SSI exemption and if the impugned goods are within exemption limits, therefore, no duty is to be charged. The Tribunal considering the submissions made by the appellants, remanded back to the adjudicating authority as blank remand. Thereafter, a fresh adjudication took place, wherein the adjudicating authority confiscated the goods and allowed to be redeemed on payment of Rs.5,00,000/- and penalty of Rs.4,16,976/- was confirmed against the appellants. The same has been confirmed by the Commissioner (Appeals). Therefore, aggrieved from the impugned order, the appellant is before me.

4. Shri Rajesh Chibber, ld. Counsel appeared on behalf of the appellants and submitted that the appellant is an SSI Unit and claiming exemption limit available under Notification No.8/03-CE and paying duty after crossing the exemption limit. As the appellant was availing exemption at the beginning of the financial year, they were precuring the inputs cleared under exemption as no cenvat credit was available. However, when the appellant was clearing the goods on

payment of duty, they were precuring inputs on payment of duty. The receipt of duty paid/non-duty paid inputs was accounted for in Form 4 Register. The finished goods removed out of non-duty paid stock, is cleared during the period when the appellant claimed SSI exemption benefit. In this case, the appellant received non-duty paid inputs during the period 1.8.06 to 11.10.06 which was used for manufacturing of finished goods. These goods were duly entered in Form 4 Register. Due to inadvertent mistake, these goods could not be entered in RG I Register and the appellant could not explain in detail regarding non-entry of these finished goods in RG I Register at the time of visit, but as the goods were manufactured by the appellants from the raw materials entered in Form 4 Register and in Form 4 Register showing manufacturing of impugned goods, therefore, there is no malafide intention on the part of the appellants to clear these goods clandestinely. These goods could not enter in RG I Register only due to the above stated reason. In that circumstances, the goods are not liable to be confiscated and therefore, no redemption fine is imposable and no penalty is leviable. To support his contention, he relied on the decision of the Tribunal in the case of Commissioner of Central Excise & Customs, Rajkot Vs. Amrut Ceramics reported in 2007 (209) ELT 390 (Tri.-Ahmd.) and the decision of the Hon'ble Punjab & Haryana High Court in the case of Commissioner of Central Excise, Chandigarh Vs. Sadashiv Ispat Ltd. reported in 2010 (255) ELT 349 (P & H). He, therefore, prayed that the impugned order is to be set aside.

5. On the other hand, Shri Fateh Singh, ld.DR appearing on behalf of the Revenue, submitted that Form-4 Register is not a proper Register to record the finished goods. He further submitted that the assessee requires to enter finished goods in their RG I Register and to maintain the Register properly, which they have failed to do so. Moreover, they could not explain the reasons why they have not entered this goods in RG I Register. He also emphasises on Paras 15 & 16 of the impugned order wherein the Commissioner (Appeals) has observed that Form-4 Register is not reliable and it has not been maintained properly. As the goods are not entered into RG I Register which is the appropriate Register to maintain the record of finished goods therefore, *mens rea* is proved by the Department that these goods are meant for clearance clandestinely. Hence, the lower authority has rightly confiscated the goods and imposed the penalty.

6. Heard and considered. After considering the submissions made from both sides, I find that under Rule 25 of the Central Excise Rules, 2002, the goods are liable to be confiscated subject to the provisions of Section 11AC of the Central Excise Act, 1944. Therefore, to confiscate the goods under Rule 25, ingredient of Section 11AC of the Act are required i.e. fraud, collusion, willful mis-statement and suppression of fact or contravention of Rule/Act with an intent to evade payment of duty. From the facts and circumstances of the case, it reveals that the inputs procured by the appellants have been duly entered in Form-4 Register. Therefore, the production made by the appellants during the impugned period is clearly entered in Form-4

Register. Admitedly, these goods are not entered in RG I Register, but it cannot be said that by merely not entering in RG I Register, there was any intention to evade duty by the appellants. Moreover, Form-4 Register was seized by the Department at the time of visit of factory of the appellants and at that time, these finished goods were shown as production made by the appellants from the raw materials procured which was duly entered in statutory records. To allege malafide of the appellants, they should be corroborative evidence to show that the act of the appellants to remove the goods clandestinely and the same should be corroborated with a definite evidence but in this case, merely the goods are not entered into RG I Register does not prove of charge of malafide on the part of the appellants. The goods were entered in Form-4 Register, which is not denied by the lower authorities. The only denial is that Form-4 Register is not proper Register to maintain the records and that does not bear any signature of the appellants. Although, the goods were not properly entered in RG I Register. That does not prove malafide of the appellants. Therefore, the goods are not liable for confiscation in the facts and circumstances of the case. As the goods are not liable for confiscation, therefore, redemption fine is not imposable, but as the appellants are not maintaining the statutory record properly, therefore, they should be penalized for not maintaining the record properly. To penalize for non-maintaining of proper record, Rule 27 is the proper Rule to impose penalty on the appellants. Therefore, a penalty of Rs.5,000/- (Rupees five thousand only) is imposed on the appellants for non-maintaining of proper records of finished goods. Appeal is disposed of in the above manner by setting aside the impugned order with consequential relief, if any.

(Dictated and pronounced in the open Court)

(Ashok Jindal)
Member (Judicial)

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