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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/2329/2008 – SM[BR]** Date **03/08/2011**

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

To :
C.C.E. RAIPUR
CENTRAL EXCISE BUILDING, DHAMTARI ROAD,
TIKRAPARA, RAIPUR 492001.

C.C.E. RAIPUR Appellant
Vs
M/S M.S.P.STEEL & POWER LTD Respondent

I am directed to transmit herewith a certified copy of **Final order No. 452 / 2011-SM[BR]** dated 28.7.2011 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
M/S M.S.P.STEEL & POWER LTD
VILLAGE- JAMGAON, DISTT-
RAIGARH(CG)

2. Adv. / Consult
MR.KARTIK KURMY,ADV
W4/17,AREA 7&8 CIVIL TOWNSHIP, ROURKELA, ORISSA-769004

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)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.

SINGLE MEMBER BENCH
Court-IV
Excise Appeal No.2329 of 2008-SM

Date of Hearing/Decision: 28.07.2010

(Arsing out of Order-in-Appeal No.71/RPR-I/2008 dated 9.07.08 passed by the CCE(A), Raipur)

For approval and signature:

Hon'ble Mr.Sahab Singh, 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?	No
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?	yes
4	Whether Order is to be circulated to the Departmental authorities?	yes

CCE, Raipur — Appellant

Vs.

M/s.M.S.P.Steel & Power Ltd. — Respondent

Present for the Appellant: Ms. R.K.Jagdev, SDR
Present for the Respondent: None

Coram: Hon'ble Mr.Sahab Singh, Member (Technical)

Final **ORDER NO.** 452/2011 SM (Br)

PER: SAHAB SINGH

This is an appeal filed by the Revenue against the Order-in-Appeal No.71/RPR-I/2008 dated 9.07.08 passed by the Commissioner of Central Excise, (Appeals), Raipur. On appeal filed by the respondents, the Commissioner (Appeals) has upheld the order in original passed by the original authority.

2. The brief facts of the case are that the respondents are registered with the Central Excise department for manufacture of sponge iron, M.s.Ingot, and TMT Bars falling under Chapter 72 of Central Excise Tariff Act, 1985. They were availing the cenvat credit of duty paid on inputs and capital goods under Cenvat Credit Rules, 2004. A show cause notice dated 2.2.2007 was issued to the respondents alleging that the removal of excisable goods clandestinely involving central excise duty of Rs.2,42,843/- and the education cess of Rs.4,857/- on M.S.Ingot and excise duty of Rs.28,771/- and education cess Rs.675/- on sponge iron as per details given in the show cause notice. The show cause notice was finally decided by the Assistant Commissioner of Central Excise Division, Bilaspur dropping the ~~penalty~~ proceedings against the assessee. The department has filed the appeal before the Commissioner (Appeals) against the order of the original authority. The Commissioner (Appeals) also rejected the departmental appeal vide impugned order against which the department is in second appeal before this Tribunal.

3. Heard learned SDR for the Revenue. None appeared on behalf of the respondents, inspite of notice.

4. After going through the memo of appeal and the impugned order, I find that the department has placed reliance on the statement of the employees during the initial proceedings. The department was not able to record the statement of Arvind Tiwari Sr. Manager in charge of production and Shri B.K.Pandey, Deputy Manager for despatch department. The department has recorded

the statement of Shr Saibal Banerjee, Sr. Manager (Accounts) who in his statement in reply to question No.4 & 5 has stated that the production and clearance of excisable goods is not looked after by him. It is also noticed that no statement of managing director or director of the appellants' company was recorded. The department is relying on the contents of some loose sheets which the respondent has stated that these are not part of books of accounts and the maker of these loose sheets is not identified in the examination. In case of clandestine removal, the prime consideration is corroborative evidence on record which is found missing in the present case. Therefore, I find no infirmity in the impugned order and accordingly the Revenue's appeal is dismissed.

(The operative part of this already pronounced in the court)

(SAHAB SINGH)
MEMBER (TECHNICAL)

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