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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 **07/09/2011**

Appeal No. **E/1126/2009 – SM[BR]**

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

To :
C.C.E. JAIPUR I
N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME,
JAIPUR 302005.
C.C.E. JAIPUR I — Appellant

Vs

M/S MULTIMETALS LTD. — Respondent

I am directed to transmit herewith a certified copy of **Final order No. 574 / 2011-SM[BR]** dated 1.9.2011 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 MULTIMETALS LTD.
HEAVY INDUSTRIAL AREA,
KOTA (RAJASTHAN)

2. Adv. / Consult SHRI K.K.ANAND ADV.
A-5,BASMENT LAJPAT NAGAR-III
NEW DELHI-24.

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New Delhi -
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
NEW DELHI
Court No.IV

E/Appeal No.1126/2009

(Arising out of order in appeal No.49-50/DK/CE/JPR/1/2009 dated 6.3.09 passed by the Commissioner of Central Excise (Appeals), Jaipur)

Date of Hearing : 26.4.2011
Date of pronouncement: 01-09-11

For Approval and signature:

Hon'ble Mr.Mathew John, Technical Member

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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 would 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 Department Authorities? Yes

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CCE Jaipur Appellants

Vs

M/s Multimetals Ltd Respondent

Appeared for the Appellant: Shri R.K. Gupta, SDR
Appeared for the Respondent: Shri Saurabh Yadav, Advocate

Coram: **Hon'ble Mr. Mathew John, Member (Technical)**

Final ORDER - 574 | 2011 SM (BR)

Per Mathew John:

The Respondent is a manufacturer of Pipes and Tubes of Copper and Copper Alloys falling under sub-headings 7411.10, 7411.21 and 7411. 22 of Central Excise tariff. They do three types of manufacturing activity, namely,

(i) Manufacturing goods from raw material procured by them and clearing finished goods on payment of duty

(ii) They get raw material from some other Central Excise assessees, manufacture goods and clear it on payment of duty

(iii) They get raw material under job-work challan from other Central Excise Assessee manufacture finished products and clear the goods under exemption notification 214/86-CE. That is to say these goods are either used in the further manufacture of the supplier or the supplier is clearing the goods on payment of duty.

2. The present dispute is about activity at (ii) and (iii) above.

3. The Revenue noticed that the Respondent had an agreement with suppliers of raw material at (ii) and (iii) above to give back finished goods with weight equal to 90% of the weight of raw material supplied. The 10% is taken as burning loss or process loss. The other factor which Revenue noticed was that as per their balance sheet in the years 2003-04 to 2005-06 the burning loss was as under :

TABLE-I

S. No	Year	Burning Loss in % of total quantity of raw material used
1	2002-03	8.44
2	2003-04	13.68
3	2004-05	11.46
4	2005-06	11.96

4. So revenue made out a case that the Respondent was actually procuring raw material for activity under (ii) and (iii) in para 1 above to make good the excess burning loss in their factory

and meet the agreement with suppliers to return finished goods weighing 90% of the weight of the raw material supplied. Revenue demanded duty on the quantity of goods manufactured from raw material which they would have procured for making good the excess burning loss in their factory. The argument canvassed is that this is activity is of the type at (i) above and they should have paid duty on such finished products.

5. There was also another matter relating Cenvat credit amounting to Rs. 49,776 which was taken on the basis of photocopy of invoices in the name of some other person.

6. A Show cause notice was issued which had three components of demand as under:

TABLE-II

S. No	Issue involved	Amount of duty demanded
A	Duty on finished goods manufactured using raw material procured by the assesse to make good the excess buring loss and supply 90% by weight of raw materials supplied to suppliers as mentioned in category (ii) in Para 1	6,74,994
B	Duty on finished goods manufactured using raw material procured by the assesse to make good the excess buring loss and supply 90% by weight of raw materials supplied to suppliers as mentioned in category (iii) in Para 1	1,45,635
C	Credit taken on invoices in the name of others	49,776

7. In adjudication proceedings duty amounting to Rs. 8,31,963 was demanded along with interest on components A and B in TABLE-II . Penalty equal to the said amount was imposed under

section 11AC of the Act. Duty amounting to Rs. 49,777 on component C in TABLE-II of the demand also was confirmed. Penalty equal to the this amount also was imposed under section 11AC of the Act. A penalty of Rs. 10,000/- was imposed on Shri D. B. Bhatnagar the President and authorized signatory of the Respondent under Rule 26 of Central Excise Rules 2002.

8. Aggrieved by the order the respondent filed an Appeal with Commissioner(Appeal). Commissioner(Appeal) held that demanding duty on goods supplied using raw material procured by the respondent to make good the excess burning loss on goods cleared under category (ii) of para 1 (Item A in Table-II) is meaningless because the Respondent had already paid duty on all clearances of this type and hence there is no shot levy. In the case of goods supplied using raw material procured by the respondent to make good the excess burning loss cleared under category (iii) of para 1, (Item B in Table -II) also he found the demand unsustainable because it is the responsibility of the supplier of the raw material who receives such finished goods to account the goods properly and hence there was no short levy. Thus he set aside the entire demand on both the counts. He also set aside the penalty imposed on the President of the Company. Demand for Rs.49776 was upheld and penalty under Rule 15 of the Cenvat Credit Rules on the company was reduced to Rs. 2,000/- which is with regard to component C of the demand

9. Aggrieved by the order of Commissioner (Appeal), Revenue has filed this appeal.

10. In the Appeal they concede the point that the goods relating component A in TABLE-II of the demand are cleared on payment of duty as held by the Commissioner (Appeal). Revenue has a new case that such goods were cleared on the basis of value arrived at by cost construction method as laid down the case of Ujagar Prints. But the goods are actually manufactured and sold and so value should have been arrived as per section 4(a) of the Act. This

is an altogether new issue being brought up in second Appeal for the first time.

11. Revenue also has a case that in respect of component B in TABLE-II clearances were not eligible for exemption under notification 214/86 because the impugned goods were not made on job work basis from raw materials received.

12. They also content that penalty equal to Rs. 49776 should have been imposed on the respondent in respect of component C of the demand.

13. Heard arguments on both sides.

14. In respect of component A (in TABLE-II) of the demand there is no dispute that the respondent has paid duty on the goods. The new issue relating valuation raised at this stage cannot be looked into because there was no such issue during adjudication stage or in first (Appeal). So Revenue's prayer on matters relating to component A of the demand is rejected.

15. In the matter of component B (in TABLE-II) it is to be noted that there is no ban on any job-worker using his own inputs as are required for completing the manufacturing process. In many manufacturing processes the job-worker has to use some minor inputs. In this case it happens that the inputs used by the job-worker is identical to the goods supplied by the Principal manufacturer. But that fact cannot bring in any additional levy. In this case extent of such raw material is less than 3%. This is not a case of any malafide scheme by which the Respondent is trying to avoid any payment of duty. This is only for the purpose of meeting his contractual obligation of restricting burning loss to 90%. Further the goods cleared by the Respondent is accounted by the recipient of the material as required under Central Excise Rules. So I am fully in agreement with the finding of the First Appellate authority that demand on account of Component B also is not

maintainable. In fact the special status of Notification 214/86 as a mechanism providing for postponement of payment of duty rather than an exemption from duty has been recognized in the decision of the Larger Bench of the Tribunal in Sterlite Industries (I) LTD Vs CCE- 2005 (183) E.L.T. 353. So there is hardly any difference between component A and component B of the demand in Table-II above.

16. In the matter of penalty for wrong Cenvat credit taken, I find that the intention to evade payment of duty has not been clearly brought out in the order-in original. So I consider it as bonafide mistake and there is no case to increase the penalty of Rs. 2000/- as upheld by the Commissioner (Appeal). I take note of the decision of the Division bench of the Tribunal in Divgi Warner Pvt Ltd VS CCE-2011 (268) ELT 412 in this regard.

17. Thus the Appeal filed by Revenue fails on all counts. So the Appeal is rejected.

(Order pronounced on 1/9/11)

(Mathew John)
(Member-Technical)