TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

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/1073/2008 – SM[BR] Date 26/03/2010

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 NIBI STEELS LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 351 / 2010 –SM[BR] dated 22.3.2010 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 NIBI STEELS LTD.
   1A, HEAVY INDUSTRIAL AREA, BHILAI,DISTT- DURG. (C.G.)
2. Adv. / Consult SHRI L.P. ASTHANA ADV.
   R-163, SECOND FLOOR G.K. PART-I,
   NEW DELHI
3. S.D.R
4. ~~J.C.D.R.~~
5. Bar association. CESTAT. New Delhi
6. Director Publications. Customs. Excise. I.P. Estate. New Delhi
7. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8. Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9. Raghuraman's 44-B. Regal Flat.Shipra Suncity. Indirapuram - 201010.Ghaziabad. DT. U.P.
10. M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11. M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
12. Taxindiaonline.com Pvt.Ltd. B-XI/8183.Vasant Kunj. New Delhi - 110070
13. Taxmann Allied Service Pvt Ltd., 21/35. West Punjabi Bagh. New Delhi - 110026
14. Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15
15. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
16. Office Copy
17. Guard file

Assistant Registrar
(SM Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-III

Date of hearing/decision: 22.3.2010

Central Excise Appeal No.1073 of 2008-SM

Arising out of the order in appeal No.14 & 15/RPR-II/2008 dated 28.2.2008 passed by the Commissioner(Appeals), Customs & Central Excise , Raipur.

For Approval and Signature:

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

1	Whether Press Reporter 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 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

C.C.E., Raipur ... Appellant

Vs.

M/s Nibi Steels Ltd. ... Respondent

Appearance:

Shri S. Gautam, Authorized Departmental Representative (SDR) for the Revenue and Shri A. Jaju, Advocate for the respondent

Coram: Hon'ble Shri M. Veeraiyan, Member (Technical)

Oral Order No. 351/2010 SM (BR)

Per M. Veeraiyan:

This is an appeal by the Department against the order of Commissioner (Appeals) No.14 & 15/RPR-II/2008 dated 28.2.2008.

2. Heard both sides.

3. When the officers visited the factory premises of respondent on 16.11.2006, ~~the~~ they found excess stock of 76.365 MTs. of M.S. Ingots manufactured in that factory. Out of the 76.365 MTs., a quantity of 20.877 MTs. of M.S. ingots were found removed from the furnace division to the rolling mill section. It was noticed also that raw material accounts were written with ink upto October, 2006 and thereafter with pencil. The excess goods valued Rs.13,54,104/- were seized. On the basis of show cause notice issued, the original authority confiscated the excess found goods under Rule 25 of the Central Excise Rules, 2002 but allowed the same to be redeemed on payment of fine of Rs.2.21 lakhs. He also imposed penalty of Rs.2000/- on the respondent firm under Rule 25 and a penalty of Rs.2000/- on Shri N.K.Yadav, Director of the respondent firm under Rule 26 of Central Excise Rules, 2002. On appeal by the respondent company, the Commissioner (Appeals) set aside the confiscation and imposition of penalty on the ground that no evidence has been brought on record to show that the goods were meant for clandestine removal.

4. Learned Jt.CDR submits that the respondents failed to maintain daily stock account which is a statutory requirement and they also had removed part of the finished goods to the rolling mill section for further processing. Further, they had deliberately maintained records of the raw material account in pencil. He seeks setting aside the order of the Commissioner (Appeals) and restoration of the order of the original authority.

5. Learned Advocate for the respondents strongly supports the order of Commissioner (Appeals) and submits that non-maintenance of accounts was a technical omission and that there was no intention to remove the goods without payment of duty.

6. I have carefully considered the submissions from both sides and perused the records. Substantial quantity of final product namely, M.S. ingots weighing about 76 MTs. was undisputedly found in excess, part of which had been removed to rolling mill. It is not the case of the respondent

that the excess found goods were the production of that day only. The excess found was substantial quantity representing several days' production. It clearly emerges that the daily stock account has not been maintained upto date for several days. The explanation offered that it was a clerical mistake cannot be accepted . Rule 25 of Central Excise Rules, 2002 clearly envisages that when a manufacturer does not account the excisable goods manufactured or stored by him, then such goods shall be liable to confiscation. Undisputedly, the huge quantity of excisable goods have been manufactured and no stock account has been maintained and in fact, part of the goods have been removed to the rolling section of the same manufacturer for further processing. Under these circumstances, violation of Rule 25(1)(b) of Central Excise Rules, 2002 is clearly established. For confiscation under this provision it is not necessary to prove that the goods were intended to be removed clandestinely. However, the conclusion reached by the original authority that they were kept for clandestine removal cannot be justified. It goes to show that the respondents failed in their obligation to maintain stock account. In view of this failure whether intended or unintended, confiscation of unaccounted goods is justified. Therefore, the order of the Commissioner (Appeals) in setting aside the confiscation cannot be upheld. The order of the Commissioner (Appeals) in this regard is set aside and the order of the original authority is restored. While restoring the order of the original authority on the confiscation of unaccounted goods, considering the entire facts and circumstances of the case, the redemption fine imposed is reduced from Rs.2.21 lakhs to Rs.1 lakh (rupees one lakh).

7. Appeal is disposed of on the above terms.

(M. Veeraiyan)
Member (Technical)

scd/