

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
SINGLE MEMBER APPEAL BRANCH

Date 13/04/2010

Appeal No. E/1217/2008 – SM[BR]

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

To :
C.C.E. KANPUR
117/7, SARVODAYA NAGAR, KANPUR 208005.
C.C.E. KANPUR

Appellant
Vs
Respondent

M/S RIMJHIM ISPAT LTD.

I am directed to transmit herewith a certified copy of Final order No. 419 / 2010 –SM[BR] dated 7.4.2010 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 RIMJHIM ISPAT LTD.

B-22-23, INDUSTRIAL AREA, BHARUA SUMERPUR, HAMIRPUR.

2. Adv. / Consult

NONE;-----

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 Publications 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 Kuni, New Delhi - 110070~~

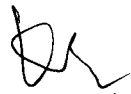
13 Taxmann Allied Service Pvt Ltd., 21/35, West Puniabi Bagh, New Delhi - 110026

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 (Harvana)

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: 7.4.2010

Central Excise Appeal No.1217 of 2008-SM

Arising out of the order in appeal No.205-CE/APPL/KNP/2008 dated 24.4.2008 passed by the Commissioner (Appeals), Customs & Central Excise, Kanpur.

For Approval and Signature:

Hon'ble Shri M. Veeraiyan, Technical Member

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.& C.E., Kanpur

Appellant

Vs.

M/s Rimjhim Ispat Ltd.

Respondent

Appearance:

Shri S.N. Srivastava, Authorized Departmental Representative (SDR) for the Revenue and none for the respondent

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

Oral Order No. 419 / 2010 SM (B)

Per M. Veeraiyan:

Heard the learned SDR on the appeal by the Department against the order of the Commissioner (Appeals) No. 205-CE/APPL/KNP/2008 dated 24.4.2008.

2. The Central Excise officers of Jhansi visited the factory on 2.12.2005 and conducted physical verification of finished goods and checked accounts. They found shortage of 49.688 MT of SS billets valued at Rs.12,81,950/- involving central excise duty of Rs.2,09,214/-. On being asked about the

reason of the shortage, the authorised signatory stated that the weight of the finished goods were recorded on the basis of cross-sectional weight system while clearance was made on actual weight system. Agreeing to the shortage, they deposited the amount of duty on 5.12.2005. Show cause notice dated 14.6.2006 was issued and the original authority apart from confirming the demand of duty imposed equal amount as penalty under Section 11AC read with Rule 25 of the Central Excise Rules, 2002. Commissioner (Appeals) has set aside the penalty so imposed.

3. Learned SDR reiterates the finding and reasoning of the original authority and the grounds of appeal.

4. I have carefully considered the submission and perused the records. The substantial quantity of finished goods which was found accounted in the statutory records was found short. The reasoning given by the party that the accounting was on cross-sectional system and the clearance was based on actual weight is not at all convincing. The duty liability was not disputed before the original authority and the Commissioner (Appeals). It is a clear case of failure to fulfil the obligation in maintaining proper accounts of goods produced and stored by the party attracting penal action under the provision of Rule 25(1)(b) of Central Excise Rules, 2002. However, in the absence of corroborative evidence on clandestine removal, the finding by the original authority holding that penalty under Section 11AC was attracted cannot be upheld. In view of the above, the order of the Commissioner (Appeals) is set aside and the order of the original authority relating to imposition of penalty is restored; while restoring the order of the original authority, the penalty is converted into penalty under Rule 25 and the same is reduced from Rs.2,09,214/- to Rs.5,000/- (rupees five thousand only).

5. Appeal is partly allowed as above.

(M. Veeraiyan)
Member (Technical)

scd/