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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 19/04/2010

Appeal No. E/1206/2008 – SM[BR]

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

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

Vs

C.C.E. KANPUR Respondent

M/S HANS METALS PVT. LTD.

I am directed to transmit herewith a certified copy of **Final order No**. 453 / 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 HANS METALS PVT. LTD.
   E-12-13, 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 Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Company Law Institute of India Pvt Ltd.,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. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
~~11 Taxindiaonline.com Pvt.Ltd. B-XI/8183,Vasant Kunj, New Delhi - 110070~~
12 Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
13 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
14 LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
15 Office Copy
16 Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. III

Excise Appeal No. 1206 of 2008-SM(BR)

[Arising out of Order-in-Appeal No. 113/CE/Appl./KNP/2008 dated 24.3.2008 passed by the Commissioner of Central Excise (Appeals), Kanpur]

For approval and signature:

Hon'ble Mr. M. Veeraiyan, 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?	:	Yes
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?	:	Seen
4. Whether Order is to be circulated to the Departmental authorities?	:	Yes

C.C.E., Kanpur ... Appellants

Vs.

M/s. Hans Metals (P) Ltd. .... Respondents

Appearance:

Shri S. Gautam, SDR for the Appellants
None for the Respondent

Date of Hearing/decision : 7.4.2010

ORAL ORDER NO. 453/2010-SM (BR)

Per M. Veeraiyan:

This is an appeal by the Department against the order of the Commissioner (Appeals) No. 113/CE/Appl./KNP/2008 dated 24.3.2008.

2. None appears for the respondent inspite of notice. Heard the learned SDR.

3. When the officers visited the factory on 10.8.05 and verified the stock of finished goods, they found shortage of finished goods namely, MS structurals weighing 35.03 MT valued at Rs. 6,83,085/- involving the duty amount of Rs. 1,11,480/-. Shri Sunil Dhiman, authorised signatory admitted the shortage and attributed the shortage as due to reporting of wrong production on the basis of estimation by the Production Supervisor. On 5.9.05, the respondent paid the duty involved amounting to Rs.1,11,480/-. The original authority confirmed the demand and imposed equal amount as penalty section 11AC of the Central Excise Act, 1944 read with Rule 25 of the Central Excise Rules, 2002. The Commissioner (Appeals), on appeal by the party, set aside the penalty imposed on the party on the ground that the duty involved had been paid before the issue of show cause notice.

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

5. I have carefully considered the submissions and perused the records. It is noticed that the shortage was substantial. The submission that the

Production Supervisor has given the production on the basis of estimation appears to be not plausible. The party has deposited the duty involved and liability was not being disputed before the original authority and Commissioner (Appeals). It is a clear case of admitted shortage of finished goods entered in RG I register / daily production records. The assessee is under obligation to account for the goods produced and cleared. In the absence of accountal for the shortage, it is clearly established that the respondents has not maintained the accounts properly. The company is liable for penalty under Rule 25(1)(b) of the Central Excise Rules, 2002. However, in the absence of any corroboration, the finding of the original authority that the goods found short were clandestinely removed cannot be accepted.

6. In view of the above, the order of the Commissioner (Appeals) in setting aside the penalty is set aside and the order of the original authority is restored and while restoring the order of the original authority, the penalty imposed is modified as penalty under Rule 25 and same is reduced to Rs.5,000/- (Rupees Five thousands only).

7. The appeal is accordingly disposed of.

(M. Veeraiyan)
Member(Technical)

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