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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/2820/2007 – SM[BR] Date 17/05/2010

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

To :
M/S NEHRU STEELS
233, ARYAPURI, MUZAFFARNAGAR.

M/S NEHRU STEELS Appellant
Vs
C.C.E. MEERUT I Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 525 / 2010 –SM[BR] dated 21.4.2010 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   C.C.E. MEERUT I
   EXCISE CHOWK, UNIVERSITY ROAD, MANGAL PANDEY NAGAR, MEERUT - 250005.
2. Adv. / Consult
   MR.C.HARISHANKAR
   46, BANK ENCLAVE,DELHI-110092
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. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
10. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
11. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
12. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
13. Office Copy
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15. TAXINDIAONLINE.COM PVT.LTD. UNIT NO. 1, 2ND FLOOR, VASANT ARCADE, NELSON MANDELA ROAD, VASANT KUNJ NEW DELHI-70.

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. III

Excise Appeal No. 2820 of 2007 (SM)

[Arising out of the Order-in-Appeal No. 112-CE/MRT-I/2007 dated 30/05/2007 passed by The Commissioner (Appeal) of Central Excise, Meerut – I.]

For Approval and signature :
Hon'ble Shri Rakesh Kumar, 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? :
2. Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? :
3. Whether their Lordships wish to see the fair copy of the order? :
4. Whether order is to be circulated to the Department Authorities? :

M/s Nehru Steels — Appellant

Versus

CCE, Meerut – I — Respondent

Appearance

Shri S. Sunil, Advocate – for the appellant.

Shri S.N. Srivastava, Departmental Representative (DR) – for the respondent.

CORAM : **Hon'ble Shri Rakesh Kumar, Member (Technical)**

DATE OF HEARING : 21/04/2010.

Final Order No. 525/2010 SM (BR) Dated : ____________

Per. Rakesh Kumar :-

The appellant are manufacturers of SGCI Inserts falling under sub heading No. 7302.90 of Central Excise Tariff Act, 1985. They had Central Excise Registration, wherein their finished product was also mentioned SGCI Inserts. On 25th September 2003, the appellant's factory was visited by Jurisdictional Excise officers and the stock of raw materials, in respect which Cenvat credit had been taken, as well as of finished products was checked. Substantial shortage of cenvated raw material was found and beside this 68 nos. of Iron moulds were also found which were not accounted for in the RG-1 register, though the same were chargeable to duty under Chapter 72. Therefore, the moulds totally valued at Rs. 5,30,400/- were placed under seizure. In respect of shortage of cenvated raw material, a separate show cause notice was issued which is not the subject matter of this appeal. This appeal is concerned only with the moulds under seizure. The Assistant Commissioner vide order-in-original dated 16th October 2006 ordered confiscation of the seized moulds under Rule 25 of Central Excise Rules, 2002 with option to the appellant to redeem the same on payment of redemption fine in lieu of confiscation of Rs. 1,35,000/- and beside this, penalty of Rs. 84,864/- was also imposed on the appellant. On appeal to Commissioner (Appeals), the Commissioner (Appeals) vide order-in-appeal No. 112-CE/MRT-I/2007 dated 30th May 2007 upheld the Assistant Commissioner's order and dismissed the appeal. It is against this order of the Commissioner (Appeals) that the present appeal has been filed.

2. Heard both the sides.

2.1 Shri S. Sunil, Advocate, the learned Counsel for the appellant pleaded that the moulds are interim product for the appellant which are used for manufacture of SGCI Inserts, that the manufacture of moulds had been started only a few days prior to the visit of Central Excise officers and for this reason only, neither the necessary amendment in the registration certificate had been made nor their production had been recorded in RG-1 register, that there was no intention to remove the moulds clandestinely without payment of duty and that in view of this, the confiscation of moulds and imposition of penalty on the appellant is too harsh.

2.2 Shri S.N. Srivastava, the learned DR, pleaded that the appellant do not dispute non-accountal of the moulds in the RG-1 register and that the same are excisable goods, that no explanation had been given for non-accountal of these moulds in the RG-1 register, that from the perusal of the order-in-original as well as order-in-appeal, it is clear that neither at the original adjudication stage nor at the first appellate stage, the appellant cooperated with the Departmental Authorities, as they neither appeared for personal hearing nor did they appear at the time of their appeal before the Commissioner (Appeals), that as such no satisfactory reasons have been given for the non-accountal of the seized goods in the RG-1 register, that in view of this, there is no merit in this appeal.

3. I have carefully considered the submissions from the sides and perused the records.

3.1 There is no dispute about the fact that the moulds are excisable items chargeable to Central Excise Duty under Chapter 72 and also there is no dispute about the fact that the same, at the time of officer's visited to the factory, had not been accounted in the RG-1 register. The total number of moulds found was 68, which obviously is several day's production. Non-accountal of excisable goods in the RG-1 register is contravention of the provisions of Rule 10 of the Central Excise Rules, which automatically would attract penalty and confiscation under Clause (b) of sub-Rule (1) of Rule 25 and it is a settled law that for confiscation of the goods, for non-accountal in the RG-1 register, and penalty on this ground, no mens-rea is required to be proved by the Department. In view of this, the confiscation of the goods and imposition of penalty on the appellant is upheld. However, looking into the circumstances of the case, penalty is reduced to Rs. 25,000/- (Rupees Twenty Five Thousand). The impugned order is upheld except for this modification.

(Dictated and pronounced in open court)

(Rakesh Kumar)
Member (Technical)

PK