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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/274 /2008-275 /2008 – SM [BR] Date 29/01/2010

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

To :
(1-2) SH. VIJAY ENGINEERING & METAL WORKS
SH. AMAR NATH PLOT NO. 165, SECTOR-24,
FARIDABAD.

SH. VIJAY ENGINEERING & METAL WORKS Appellant

Vs

C.C.E. DELHI IV Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 154 – 155 / 2010 –SM[BR] dated 22.1.2010 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. DELHI IV
NEW CGO COMPLEX, NH-IV, FARIDABAD, HARYANA 121001.
2. Adv. / Consult
MR.ER Y KUMAR
4029,GREEN FIELDS, FARIDABAD.121010
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
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Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
BENCH-SM

Date of Hearing :**23.12.2009**
Date of Decision : 22-1-2010

Excise Appeal No. E/274-275/08-SM

[Arising out of Order-in-Appeal No. 125/CE/Appl/DLH-IV / 07 dated 31.10.2007 passed by the Commissioner (Appeals), Central Excise, Delhi-I, Faridabad].

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 should 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 Departmental authorities?	

Shri Vijay Engg. & Metal Works and Others ...Appellant

Vs.

CCE, Delhi-IV ... Respondent

Present for the Appellant :Dr. Y. Kumar, Advocate
Present for the Respondent :Shri.M.K. Rastogi, SDR

Coram: Hon'ble Mr. Rakesh Kumar, Member (Technical)

Final **ORDER NO.** 154-155/2010 SM (BR) **DATED:** 22/1/2010

PER: RAKESH KUMAR

The facts giving rise to these appeals are, in brief, as under:-

1.1 M/s. Vijay Engineering & Metals Works (hereinafter referred to as the Appellant firm) are a partnership firm with

Shri Amar Nath as one of the partners. They manufacture tractor/ motor vehicle parts chargeable to Central Excise duty under Chapter 87 of the Central Excise Tariff. They also avail the duty credit in respect of inputs as per the provisions of Cenvat Credit Rules. For the manufacture of parts, they acquire rough forgings from M/s.Vijay Malleable Pvt. Ltd. and M/s. Khosla Foundry Ltd. and they take cenvat credit of duty paid on the rough forgings. The Appellant firm's factory was visited by the jurisdictional Central Excise Officers on 10.1.2003 in the course of which their records were scrutinized and stock of the inputs and finished goods were checked. Certain records were also resumed. The officers took the stock of various inputs as on 1.4.2002 from the Appellant firm's balance sheet, and thereafter took into account the receipts / purchases including unaccounted purchases, as ascertained from the resumed records, during 1.4.2002 - 10.1.2003 paid, and production as clearance of finished goods, stock in process, stock of inputs sent for job work but not returned during 1.4.2002 - 10.1.2003 period and on this basis, arrived at the stock of rough forgings of various types, which should have been available as on 10.1.2003 and on comparing it with the stock of those type of rough forgings available, found that there was shortage of the following type of rough forgings for which there did not appear to be any satisfactory explanation from the Appellants.

Hub @ 160	302
Adopter Plate	85
Trumpet HSG	1479

Axle tube	33
HSG Timing Gear	237
Cover Timing Gear	273
Axle Cover	53

Total value of the parts made out of these rough forgings found short was Rs.22,80,222/- Since even Shri Amar Nath could not given any satisfactory explanation to the investigating officers and he said that only finished goods had been cleared and no rough forgings had been sold as such, it appeared that the above mentioned rough forgings, after being furnished into automobile/ tractor parts had been cleared clandestinely without payment of duty. It is on this basis that a SCN dated 8.1.2004 was issued for --

(a) demand of central excise duty amounting to Rs.3,64,836/- alongtwith the interest, chargeable on finished goods valued at Rs.22,80,222/- alleged to have been cleared clandestinely without payment of duty; and

(b) imposition of penalty on the Appellant firm u/s 11 AC of the Central Excise Act, 1944 and on Shri Amar Nath U/R 26 of the Central Excise Rules, 2002.

1.2 The above SCN was adjudicated by the Assistant Commissioner vide Order-in-Original dated 27.14.2006 by which the duty demand alongwith interest was confirmed; penalty of equal amount i.e. Rs.3,64,836/- was imposed on the Appellant firm u/s. 11AC of the Central Excise Act, 1944 and penalty of Rs.50,000/- was imposed on Shri Amar Nath U/R 26 of the Central Excise Rules, 2002.

1.3 On appeal to Commissioner (Appeals), the duty demand was reduced to Rs.204132/- as against the original demand of Rs.3,64,836/- on the ground that the Revenue had not take into account the 735 pieces of castings for "Trumpet HSG" sent for job work. The penalty on the Appellant firm U/S 11 AC was reduced to Rs.2,04,132/- and penalty on Shri Amar Nath was reduced to Rs.15,000/-.

1.4 These appeals have been filed by the Appellant firm and Shri Amar Nath against the above mentioned order in appeal.

2. Heard both the sides.

2.1 Shri Y.S.Kumar, Advocate, the learned Counsel for the Appellants, made the following submissions:-

(1) The Department's case of clandestine removal of MV parts is based on alleged shortage of certain types of rough castings which in turn, is based on the stock of those rough castings as on 1.4.2002, as shown in the balance. The officers investigating have not considered the stock of those rough castings as on 10.1.2003, as given in the RG-23A Part-I. In Ram Tyre Ltd. Vs. CCE, reported in 2005 (188) ELT-408, it was held that no liability can be fastened on the basis of the

figures in the balance sheet and that the Department should have made inquiries from the buyers of finished goods. Same view has been taken in cases of M/s. Melton India (P) Ltd. vs. CCE reported in 2005 (181) ELT- 129 and M/s. Arch Pharmalabs Ltd. vs. CCE reported in 2005 (182) ELT 413 (Tri.-Bang.).

(2) In a recent case too, - M/s. Atlas Conductors vs. CCE reported in 2008(221) ELT- 231, the balance sheet figures have been discarded and it has been held that duty demand is to be based only on the actual manufacturing activity and not on presumptions.

(3) Department's allegation of unaccounted purchase of rough castings is without any basis, as no inquiry has been made in this regard with the suppliers.

(4) In respect of allegation of clandestine removal of finished goods, no inquiry has been made with the buyers. There was no incentive for the Appellant for evade the duty as their buyers are OEMs, like Maruti, Escorts etc who would not accept any goods without invoices. In case of Beck India Ltd. vs. CCE reported in 2004 (173) ELT- 70 it has been held that mere shortage of goods is not evidence of clandestine removal.

(5) Tribunal in cases of --

(i) Kalvert Foods India Pvt. Ltd. vs. CCE, Mumbai- 2003 (152) ELT 131 (Tri. Del), and

(ii) M/s. Arora Products vs. CCE, Jaipur reported in 2003 (152) E.L.T. 69 (Tri. Del.) has held that positive evidence is required to substantiate the allegation of clandestine clearances.

(6) The Department has alleged clandestine/unaccounted purchases of rough forgings. It is silent as what happens to the excesses.

3.2 Shri P.K.Singh, the learned DR, defended the impugned order emphasising that-

(i) from the RG023A Pt.-I register, it is not possible to ascertain the stock of various types of rough forging as the rough forging, immediately on receipt, are shown as issued for production and the only way to ascertain their stock was with reference to their stock as on 1.4.2002, as shown in the balance sheet, that there is no reason to disbelieve the balance sheet figures, that since at present there is no statutory record provided by the Department and private records of raw-material purchase, production, sale etc. can be relied upon, them is no reason why the balance sheet figures can not be relied upon and that since the appellant have admittedly sold only the finished goods, it is clear that the rough forgings found short have, after being furnished, been cleared clandestinely as MV parts without payment of duty.

3. I have carefully considered the submissions from both the sides and perused the records. The appellant firm receives rough forgings of various parts of motor vehicles/tractors and processes the same to manufacture tractor/ MV parts. In some cases, they send the semi-finished goods out to job worker for certain process. Since the Appellant admittedly clear only the tractors parts/ MV parts, not rough forgings, unexplaining shortage in the stock of rough forgings would imply clandestine clearance of finished MV/tractor parts. The point of dispute is as to whether the method adopted by the department for determining the stock of various items of rough forgings as on 10.1.2003 with reference to the stock of these rough forgings shown in the balance sheet as on 1.4.2002 is correct. According to the Appellant, the balance sheet figures are not reliable and that the physical stock of various type of rough forgings should have been compared with the stock of these rough forgings, as shown in the RG 23 A Pt-I, and in this regard they rely upon the judgement of the Tribunal in cases of Ram Tyres Ltd. vs. CCE (supra), Melton India (P) Ltd. vs. CCE (Supra), and Arch Pharmalabs Ltd. vs. CCE (Supra). However in this case, there is evidence of unaccounted receipt of rough forging of 1172 fly wheel assembly, 475 flywheel HSG, 633 Adopter plate, 1150 Pully Crank Shaft, 59 R.E. Hsg, 393 Hydraulic Lift Body, 268 Ford Bend, 45 Engine Covers, 92 Support Front Axle, 50 Oil Pan and 36 Weight. In view of this the RG 23A Pt.-I figures are not reliable at all and the Department is

justified in determining the balance of various types of rough forgings on the basis of stock of various rough forgings as on 1.4.2002, as shown in the balance sheet for the year 2001-02, rough forgings received (accounted as well as unaccounted) during 1.4.2002 - 10.1.2003 period and the finished goods manufactured and cleared and sent out for job-work but not returned during 1.4.2002- 10.01.2003 period. The balance sheet figures are, after all, checked and authenticated by the Auditors and there is no reason to disbelieve the same. The Tribunal's judgements cited by the Appellant are not applicable to the facts of this case. When huge quantities of rough forgings were being purchased without being accounted in the records, it is reasonable to infer that the finished goods had also been cleared clandestinely without payment of duty.

4. In view of the above discussion, I do not find any infirmity in the impugned order. The appeals are dismissed.

(PRONOUNCED IN OPEN COURT ON 22-01-2010).

(RAKESH KUMAR)
MEMBER (TECHNICAL)

Anita