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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/237 /2008 – SM[BR] Date 15/02/2010

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

To :
C.C.E. LUCKNOW
7-A, ASHOK MARG, LUCKNOW.

C.C.E. LUCKNOW Appellant
Vs
M/S VVS ALLOYS LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 221 / 2010 –SM[BR] dated 3.2.2010 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 VVS ALLOYS LTD.
   B-46 & 47, UPSIDC, INDUSTRIAL AREA,MALWAN FATEHPUR (U.P.)
2. Adv. / Consult SHRI BIPIN GARG ADV.
   B-1/1289-A, VASANT KUNJ 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)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
NEW DELHI, PRINCIPAL BENCH NEW DELHI

Appeal No.237 of 2008-SM (BR)

[Arising out of Order-in-Appeal No.152-CE/LKO/07 dated 31.10.2007 of the Commissioner of Central Excise (Appeals), Lucknow]

Date of Hearing/ Decision:03.02.2010

For approval and signature:

Mr. M. Veeraiyan, Member (Technical)

1. Whether Press Reporters may be allowed to see 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

CCE, Lucknow ...Appellants
(Rep. by Shri R.K. Saini, DR)

Vs.

M/s. VVS Alloys Ltd. ...Respondent
(Rep. by Shri Manish Saharan, Advocate)

CORAM: **Hon'ble Mr. M. Veeraiyan, Member (Technical)**
Final Order No. 221/2010-SM(BR)/Dated:22.02.2010

Per M. Veeraiyan:

This is an appeal by the Department against the order of the Commissioner (Appeals) No.152-CE/LKO/07 dated 31.10.2007.

2. Heard both sides.

3. The relevant facts, in brief, are that when the central excise officers visited on 26.02.2006, they found a stock of 224.965 MTs. of M.S. Bars as against book stock of 128.165 MTs and after excluding the

day's production of 22 MTs, they found an excess stock of 74.80 MTs of M.S. Bars. Similarly, as against the book stock of 136.200 MTs of Angles and Channels, they found a stock of 179.600 MTs and after excluding that day's production, excess stock was found to be of 15.40 MTs. of Angles and Channels. Shri Sanjay Agarwal, Director of the firm confirmed the excess stock in his statement dated 26.02.2006 and he has reiterated the same in his subsequent statements dated 5.7.2006 and 10.08.2006. However, for the first time, in the reply to the show cause notice dated 20.09.2006, it was stated that the physical verification of stock was done by eye estimation. The Original Authority confiscated the excess stock and allowed them to be redeemed on payment of fine of Rs.45,000/-; he also ordered that appropriate duty shall be paid at the time of clearance; he has also imposed penalty of Rs.2,40,952/- equal to the amount of duty involved on the excess found stocks. On appeal by the party, the Commissioner (Appeals) set aside the order of the Original Authority in toto.

4. Ld. SDR submits that the method of weighment was based on weighment of samples of bars and adopting the weight for identical bars and this method was accepted by the Director and the excess was admitted by him in his statement taken on 26.02.2006 and reiterated by him in his subsequent statements. Therefore, the goods found in excess were liable for confiscation. In the absence of explanation for the excess found goods, the same should be treated as meant for clandestine

removal. Therefore, he seeks setting aside order of the Commissioner (Appeals) and restoration of the order of the Original Authority.

5. Ld. Advocate for the respondent on the other hand strongly supports the order of the Commissioner (Appeals). He submits that no proper stock verification was done and, therefore, there was no excess of stock and, therefore, the order of the Commissioner (Appeals) should be upheld.

6. I have carefully considered the submissions from both sides. The basic dispute is whether there was excess stock of goods weighing 74.80 MTs. of M.S. Bars and 15.40 MTs. of Angles and Channels. The respondents claimed that there was no excess stock as there was no physical weighment and the stock ascertained was on eye estimation basis. According to the Department as revealed in the Panchnama, the weighment was done for samples of representative categories and the weight adopted accordingly. This issue requires to be resolved in the context of statement given by the Director of the Company on 26.02.2006, which stands reiterated by his two subsequent statements given after long intervals on 5.7.2006 and 10.08.2006. It is not the case of the respondent that the products manufactured by them are non-standard varieties. If there are a few standard varieties and in respect of each standard variety, variation cannot be significant. If there was such variation in bars of particular dimension, it is common knowledge that the users of the said bars are not likely to buy from the respondents. The method adopted for ascertaining the weight appears reasonable. In view

of the above, the Commissioner was not correct in holding that there was no excess stock as held by the Original Authority. However, the submissions on behalf of the Department that what was kept in excess was meant for removing clandestinely is not borne out of facts as there was no such admission in this regard. It is not the case of the Department that there were instances of clandestine removal by the respondents on earlier occasions or they have found any documentary evidence like private records indicating clandestine removal.

7. In view of the above, while finding regarding the excess stock and non-maintenance of proper accounts by the respondents deserves to be upheld, the submission regarding intended clandestine removal cannot be accepted.

8. In view of the above, the order of the Commissioner (Appeals) is set aside. The order of the Original Authority is restored insofar as it relates to confiscation of excess goods and imposition of redemption fine of Rs.45,000/-. However, while restoring the order of the Original Authority insofar as it relates to imposition of penalty under Rule 25 of the Central Excise Rules, 2002 is concerned, the same is modified as penalty under Rule 27 of the Central Excise Rules, 2002 and reduced to Rs.5,000/-.

9. Appeal is disposed off on the above terms.

Order dictated & pronounced in open court on 03.02.2010.

(M. Veeraiyan)
Member (Technical)

Ckp.