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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 23/09/2010

Appeal No. E/2084 - 2085/2008 – SM[BR]

Assistant Registrar
C.E.S.T.A.T, New Delhi
To :
1. M/S S.B.STEELS PVT. LTD.
2. SH. KULBHUSHAN RAI, DIRECTOR,

B-26, OKHLA INDUSTRIAL AREA, PHASE-II,NEW DELHI.

Appellant

M/S S.B.STEELS PVT. LTD.

Vs
Respondent

C.C.E. DELHI II

I am directed to transmit herewith a certified copy of **Final order No**. 1012 – 1013 /2010-SM[BR] dated 7.9.2010 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 II

C.R. BUILDING, I.P. ESTATE, NEW DELHI 110002

2. Adv. / Consult

MR.BIPIN GARG

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 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 TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
14 Office Copy
15 Guard file

Assistant Registrar
(SM Appeal Branch)

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

Excise Appeal Nos. 2084 - 2085 of 2008-SM (BR)

[Arising out of Order-in-Appeal No. 76-77/CE/DLH/2008 dated 20.06.2008 passed by the Commissioner of Central Excise, New Delhi-II]

Date of Hearing/ Decision: 07.09.2010

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

M/s. S.B. Steels Pvt. Limited ...Appellant
Sh. Kulbhushan Rai, Director

Vs.

CCE, New Delhi ....Respondent

Appearance: Ms. Sukriti Das, Advocate appeared for the appellant.
Shri R.K. Gupta, SDR appeared for the respondent.

CORAM: **Hon'ble M. Veeraiyan, Member (Technical)**

Final Oral Order No. 1012-1013/2010 SM(BR)

Per M. Veeraiyan:

Excise Appeal No. 2084 of 2008 is by M/s S.B. Steels Pvt. Ltd. against the order of the Commissioner (Appeals) dated 20.06.2008. Excise Appeal No. 2085 of 2008 is by Sh. Kulbhushan Rai, Director of the above appellant company against the very same order.

2. Heard both sides.

3. The relevant facts, in brief, are as follows:-

3.1. The premises of the appellant factory was visited by the Officers on 29.01.1997 consequent to interception of a truck loaded with goods cleared from the appellant factory. The driver of the truck produced an invoice dated 27.01.1997 meant for 8.120 MT of MS flats and MS rounds. On subsequent weighment by the Officers, the weight of the consignment in the truck was ascertained to be 12.510 MT of MS flats and MS rounds valued at Rs. 1,47,608/-. The goods alongwith vehicle were seized. On verification of the stock in the factory, it was noticed that there was excess stock of 58.410 MT of MS flats and 9.030 MT of MS rounds valued at Rs. 8,11,989/- which was also seized. Sh. Kulbhushan Rai, Director in his statement dated 29.01.2001 claimed that the despatches from the factory were being looked after by Sh. Balwant who was not present in the factory on ~~the date~~ that day. He also pleaded that he was unwell and unable to make any further statement on the said date. Subsequently, on 03.09.97 he appeared and stated that he has nothing more to add to the earlier statement dated 29.01.97.

3.2 The original authority by order dated 30.03.2007, in de-novo proceedings, confiscated the goods seized from the truck outside the factory and also excess goods found in the factory and allowed the same to be redeemed on payment of a fine of Rs. 2 lakhs. He imposed a penalty of Rs. 50,000/- on M/s S.B. Steels Pvt. Ltd. under Rule 25 of the Central Excise Rules, 2002. He also imposed a penalty of Rs.50,000/- on Sh. Kulbhushan Rai.

4. On appeal by the parties, Commissioner (Appeals) upheld the confiscation of 54.410 MT of MS flat and 9.030 MT of MS round valued at Rs. 8,11,980/- and fixed a fine of Rs. 1.70 lakh. He also upheld the finding that the Director is liable to penalty.

5. However, the matter relating to confiscation of 12.510 MT of MS round and MS flat was remanded back to the original authority by the Commissioner (Appeals). It is claimed by the learned Advocate for the appellant that the original authority in pursuance of Commissioner (Appeals)'s remand order confiscated 4.510 MT of MS round and MS flat but allowed the same to be redeemed on payment of fine of Rs. 25,000/-; he also imposed penalty of Rs. 50,000/- on M/s S.B. Steels Pvt. Ltd.; and a penalty of Rs. 45,000/- on the Director).

6. Learned Advocate submits that the appellant company does not have waighing machine/weighing bridge in the factory. The goods which were loaded in the truck were meant to be taken for the purpose of weighment and thereafter invoice was to be prepared and the officers have seized the goods before weighment could be done. There is no intention to clear the goods without payment of duty. The omission, if any, is only technical in nature.

6.1 She also submits that the excess stock found by the officers were goods received from a trader. In fact, they have sent an intimation letter dated 21.1.97 which was acknowledged by the Division Office wherein it was claimed by them "We have certain urgent orders of finished product and due to power failure we are not in a position to manufacture and supply. Hence we are purchasing some material (i.e. finish product) from out side. This is for your kind information". Therefore, the confiscation of excess found goods treating them as having been manufactured by the appellant company was not justified. She seeks setting aside the order of the Commissioner (Appeals) upholding the confiscation of the excess found goods.

7. Learned DR submits that the Commissioner (Appeals) have set aside the order of the original authority in so far as the same related to seizure of 12.510 MT and remanded the matter to the original authority. Therefore, the appeal against the order of Commissioner (Appeals) should be limited to the confiscation of excess found goods and the finding of the Commissioner (Appeals) in holding that the Director was also liable to penalty.

7.1 He submits that the claim of the appellant company that they brought goods manufactured by others is not supported by any evidence. The said letter was not mentioned during investigation and not even in reply to the show cause notice but raised for the first time before the Commissioner (Appeals). Therefore, the claim should not be accepted.

8. I have carefully considered the submissions from both sides and perused the records. The issue relating to confiscability and penalty, if any, arising out of seizure of 12.510 MT of MS flat and MS round was remanded

by the Commissioner (Appeals) to the original authority. It is also claimed that orders had since been passed by the original authority in denovo proceedings. The said order was subject to appellate remedy as provided under law. Therefore, it is not necessary to deal with the issue arising out of seizure of 12.510 MT of MS flats and MS round.

8.2 The Commissioner (Appeals) has held that the excess found goods were manufactured by the appellant company and the same were not accounted for and hence liable for confiscation. The said finding deserves to be upheld. The Director of the appellant company was present on the date of visit by the Officers. The appellant's director has not mentioned anything about receipt of such huge quantity of finished goods said to have been purchased from third party. The said Director has not given detailed statement on 29.01.97 on the ground of ill health. Still, he has chosen to give no further details in his statement taken in March 1997. The letter dated 21.01.97 surfaced for the first time before the Commissioner (Appeals). The said letter did not indicate the exact nature of finished goods and the quantity. It also did not reveal further evidence relating to transport of the goods from the buyer and payment to the buyer. Even at this stage, no such details have been furnished. Therefore, the rejection of this claim by the Commissioner (Appeals) does not called for any interference. Considering the nature of violation, while confiscation requires to be upheld, there is some scope for reduction in redemption fine.

8.3. However, the finding of the Commissioner that the Director was liable to penalty in this regard cannot be upheld. No evidence of knowledge or intention on the part of the Director has been relied upon. The statements of the Director recorded on 29.01.97 and in March 1997 attributes ignorance to the Director and no knowledge of any activities relating to dispatch or purchases. Therefore, in the absence of such evidence the benefit of doubt deserves to given to the Director.

9. In view of the above-

(a) Excise Appeal No. 2085 of 2008 by Shri Kulbhushan Rai, Director in so far as the finding against him holding that he was liable to penalty is allowed. The Director is not liable to penalty in respect of excess goods found in the factory.

(b) Excise Appeal No. 2084 of 2008 is disposed of as follows. Order of the Commissioner (Appeals) upholding the order of confiscation is upheld. However, the redemption fine is reduced from Rs. 1,77,000/- to Rs. 1 lakh. A penalty of Rs. 50,000/- was imposed by the original authority. While the Commissioner (Appeals) has held that the appellant company is liable to penalty, he has not indicated the quantum of penalty. Under these circumstances, the penalty imposed by the original authority on the appellant company is reduced from Rs. 50,000/- to Rs. 25,000/-.

(M. Veeraiyan)
Member (Technical)

Pant