

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/1532/2008 – SM[BR]

Date 05/10/2010

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

To :
M/S V.V.S CONCAST LTD. (UNIT-II)
48-50, UPSIDC INDUSTRIAL AREA,
MALWAN, FATEHPUR.
M/S V.V.S CONCAST LTD. (UNIT-II)

Appellant

Vs
Respondent

C.C.E. LUCKNOW

I am directed to transmit herewith a certified copy of Final order No. 1100 / 2010-SM[BR] dated 31.8.2010
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. LUCKNOW

7-A, ASHOK MARG, LUCKNOW.

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 Publications 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 (Harvana)

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, COURT NO. IV**

Excise Appeal No. 1532 of 2008-SM(BR)

[Arising out of Order-in-Appeal No. 52-CE/LKO/2008 dated 31.3.08 passed by the Commissioner of Customs & Central Excise (Appeals), Lucknow.]

For approval and signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)

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- | | |
|--|------|
| 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. V.M.S. Concast Ltd.

Appellants

Vs.

Commissioner of Central Excise
Lucknow

Respondent

Appearance: Shri Bipin Garg, Advocate for the Appellants
Shri R.K. Gupta, SDR for the Respondent

Date of Hearing/decision : 31.08.2010

Final

ORAL ORDER NO. 1100/2010 SM(BR)

Per M. Veeraiyan:

This is an appeal against the order of the Commissioner (Appeals) No. 52-CE/LKO/2008 dated 31.3.08.

2. Heard both sides.

3. When the officers visited the factory premises of the appellant on 18.1.07, and conducted stock verification of finished goods, they found discrepancies. They found a stock of 398.736 MT of MS Wire rods as against stock of 323.835 as per records and thus excess of 74.901 MT valued at Rs. 14,98,020/- and in respect of inputs, they found a stock of 210.255 MT as against the stock of 203.445 MT as per record and thus an excess of 6.81 MT valued at Rs. 1,31,494/- . The original authority confiscated the wire rods and allowed the same to be redeemed on payment of fine of Rs. 5,00,000/-; he confiscated MS ingots and allowed the same to be redeemed on payment of fine of Rs.50,000/-. He also imposed equal amounts as penalties. A penalty of Rs. 2,44,477/- and Rs.21,460/- respectively was imposed for excess found finished goods and excess found inputs respectively. The Commissioner (Appeals) has upheld the order of the original authority.

4. Learned Advocate for the appellants submits that the inputs are received by them with the weighment slips provided by the supplier and accordingly receipt is accounted and they do not physically weigh the inputs again. The finished goods are coming out of process in hot condition and they are not subjected to any weighment. The weight is recorded taking notional loss of 3 to 3.5%. At the time of clearance of finished products

only the actual weighment takes place and therefore, there is an apparent discrepancy. Further, he submits that when there were 2769 coils, the officers have taken 20 coils and adopted the weight of coils arrived at for the weight of entire consignment. Thus, the shortage arrived at is not reliable and in fact there is no excess at all. Alternatively, he submits that even if it was found to be more as per entry in the RG I, it cannot be treated as non-accountal of the goods. For this purpose, he relied on the decision of Tribunal in the case of CCE vs. Amrut Ceramics as reported in [2007 (209) ELT 390 (Tri)] as also the decision of the Tribunal in the case of CCE, Chandigarh vs. Channi Steels (P) Ltd. as reported in 2010 (252) ELT 255 which relies on the decision of Tribunal in the case of Amrut Ceramics.

5. Learned SDR strongly defends the order of the Commissioner (Appeals). He submits that in the present case, there was excess of inputs as well as finished goods. Further, he submits that the weight has been arrived at after weighing representative samples and same has not been disputed by the authorised signatory. Disputing the weighment method is an after thought.

6. I have carefully considered the submission from both sides and perused the records. I find that the appellants are claiming that the finished goods are not weighed and accounted on approximate basis taking notional loss of 3 to 3.5%. This method of accounting is not sanctioned by law. On the other hand, the method adopted by the investigating officers in weighing the representative samples and arriving at the weight is definitely much more scientific than the method adopted by the appellants. It is not disputed that

the samples were weighed and samples were representative. It is not a case of the MS rods which are meant for specific application can have wide variations in weight. The variations in weight is 74.90 MT against accounted stock of 323.835 MT which is very substantial. The explanation offered by the authorised signatory of the appellants has been rightly rejected by the authorities. The submissions of the learned Advocate that it was merely a case of non-entry in the statutory records and it cannot be treated as a case of non-accountal does not deserves to be accepted. After all accounting has to be done by entering in some books of accounts. The appellants have entered in RG I and the actual stock found was substantially in excess compared to accounted stock. The liability of the manufacturer of excisable goods is a strict liability as envisaged under Rule 25 ibid of the Central Excise Rules, 2002 attracting penalty under Rule 25(1)(b) when the manufacturer "does not account for any excisable goods produced or manufactured or stored by him". In view of the above, the excess found manufactured goods were liable for confiscation and the manufacturer is also liable for penalty. As regards the non-accountal of 6.81 MT of inputs are concerned, the submission on behalf of the appellant that they have not taken credit for that quantity is a factor to be taken into consideration for adjudging the confiscation and penalty. A manufacturer cannot be allowed to bring any amount of raw materials and store them till issue for manufacture without accounting on the ground that they have not taken credit as the same will go against the basic control on the manufacturer regarding the accounting of raw material and the final products.

7. However, it is noticed that the original authority has imposed penalty equal to excise duty involved in excess found finished goods and also equal to the amount of credit on the inputs found in excess. There is no justification for imposing penalty equal to the duty involved as they cannot be equated to clandestine removal. Therefore, there is scope for reducing the penalties.

8. In the light of the above, the appeal is disposed of as follows:

- a) Confiscation of excess found finished goods is upheld and the redemption fine is reduced from Rs. 5 lakhs to Rs.2,50,000/- (Rupees Two lakh and fifty thousand only);
- b) Confiscation of 6.81 MT of MS ingots is upheld on charge of improper maintenance of accounts but the redemption fine is reduced to Rs. 50,000/- to Rs. 5,000/- (Rupees Five thousand only); and
- c) The penalty imposed is reduced from Rs.2,65,937/- to Rs.1,00,000/- (Rupees One lakh only) under Rule 25 of the Central Excise Rules, 2002.

(M. Veeraiyan)
Member(Technical)