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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/2098/2008 – SM[BR] Date 15/10/2010

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

To :
M/S REAL IRON COMPANY PVT. LTD.
B-9, UPSIDC, INDL. AREA, ORAI, DISTT. JALAUN.

M/S REAL IRON COMPANY PVT. LTD. Appellant

Vs

C.C.E. KANPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1112 / 2010 –SM[BR] dated 20.9.2010 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. KANPUR
   117/7, SARVODAYA NAGAR, KANPUR 208005.
2. Adv. / Consult
   MR.AMIT AWASTHI
   113 / 145 , SWAROOP NAGAR, KANPUR-208002
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

Date of Hearing/ Decision:03.09.2010

Excise Appeal No.2098 of 2008-SM (BR)

For approval and signature:
Hon'ble Shri Ashok Jindal, Member (Judicial)

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1. Whether Press Reporters may be allowed to see 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? :

[Arising out of Order-in-Appeal No.226-CE/APPL/KNP/2008 dated 30.05.2008 passed by the Commissioner of Central Excise (Appeals), Kanpur].

M/s. Real Iron Co. (P) Ltd. Appellant

Vs.

CCE, Kanpur Respondent

Appearance: Rep. by Shri A.K. Dixit, Advocate on behalf of the appellants.
Rep. by Shri K.P. Singh, SDR on behalf of the respondent/Department.

CORAM: **Hon'ble Shri Ashok Jindal, Member (Judicial)**

Final Order No. 1112/2010 SM (BR) /Dated:03.09.2010

Per Ashok Jindal:

The appellant has filed this appeal against the order of the Commissioner (Appeals) confirming demand on second visit by the preventive officers at the premises of the appellants on the ground of shortages of inputs detected by the preventive officers.

2. The facts of the case are that on 23rd September, 2005, the factory of the appellants was visited by the preventive officer and a shortage of 31.000 M.T. of Sponge Iron (input) and 4.080 M.T. of finished goods were detected and a show cause notice was issued to the appellants for those shortages. The same was adjudicated. The duty demand was confirmed, which was admitted by the appellant and paid the dues accordingly. Later on, another visit was done at the premises of the appellant on 21.12.2005 by the preventive officers and against a shortage of 31.060 M.T. of Sponge Iron was detected and further, a show cause notice was issued and the same was adjudicated. Demand was confirmed. Aggrieved from the said confirmation of the demand, the appellant is before me.

3. Ld. Advocate for the appellant submitted that they have admitted the shortages of inputs at the time of visit of the preventive officers first time in their factory on 2.9.2005 and paid the duty on such shortages. The

same shortage was continued in their stock till the second visit was done on 21.12.2005. In fact, they have already paid the duty, subsequently ~~and~~ the demand is not sustainable on that ground. He further submitted that they have raised this contention before the lower appellate authorities but the same was not considered and demand was confirmed.

4. On the other hand, ld. DR submitted that on second visit also, the shortages were found and the same was admitted by the appellant. Moreover, the appellant failed to take the defence that the shortages of inputs is continuing since September, 2005 till 21.12.2005 at the time of second visit before the adjudicating authority. Hence the defence at this stage taken is not maintainable. Hence the impugned order is to be confirmed.

5. Heard both sides.

6. On consideration of submissions from both the sides, I find that the second visit was done by the preventive officers within three months of the first visit till then, the shortages found at the first visit was not confirmed against the appellant and the lower appellate authority although took notice of the same but rejected the claim of the appellant on the ground that the defence was not taken by the appellant before the adjudicating authority. He further noted that the appellant has not given any evidence in support of their claim.

7. Considering the findings given by the lower appellate authority, I find that the matter needs examination at the end of the adjudicating authority in respect of the shortages found at the second visit, which were the same as at the time of first visit. If the case is of that nature then demand is not sustainable. But this fact is to be examined by the adjudicating authority. In these circumstances, I have no option except to remand the matter to the original adjudicating authority to ascertain the fact whether the shortages found during the second visit were the same as were found at the time of first visit or not. Accordingly, the matter is remanded back to the original adjudicating authority to decide the issue after giving a reasonable opportunity to the appellants to file documents in support of their claim. In these terms, the appeal is allowed by way of remand.

(Ashok Jindal)
Member (Judicial)

Ckp.