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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

EXCISE APPEAL BRANCH

Date 09/07/2010

Appeal No. E/4443/2004 - EX[DB]

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

To :
M/S SAI CHEMICALS PVT. LTD.
TEDSARA, DISTT. RAJNANDGAON (C G) — Appellant

Vs

M/S SAI CHEMICALS PVT. LTD.

C.C.E. RAIPUR (C G) — Respondent

I am directed to transmit herewith a certified copy of **Final order No. 426/ 2010 EX[DB]** dated 27.4-10 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
   C.C.E. RAIPUR (C G)
   DHAMTARI ROAD, TIKRAPARA, RAIPUR
2. Adv. / Consult SHRI SAURABH SUMAN, ADV. C/O JITENDRA SINGH, F-21, GEETANJALI ENCLAVE, N. DELHI-17
3 C.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
16. HON'BLE PRESIDENT.
17. SH. BIPIN GARG, ADV., B-1/1289-A, VASANT KUNJ, N. DELHI-70

Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. I

DATE OF HEARING : 27/04/2010.
DATE OF DECISION : 27/04/2010.

Excise Appeal No. 4443 of 2004

[Arising out of the Order-in-Appeal No. 100/RPR-II/2004 dated 30/03/2004 passed by The Commissioner (Appeals), Central Excise and Customs, Raipur.]

For Approval and signature :

Hon'ble Justice R.M.S. Khandeparkar, President
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?	: Yes
2.	Whether it would 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?	:
4.	Whether order is to be circulated to the Department Authorities?	:

M/s Sai Chemicals Private Ltd. — Appellants

Versus

CCE, Raipur — Respondent

Appearance

Shri Saurabh Suman, Advocate – for the Appellants.

Shri R.K. Verma, Authorized Representative (JDR) – for the Respondent.

CORAM : **Hon'ble Justice R.M.S. Khandeparkar, President**
Hon'ble Shri Rakesh Kumar, Member (Technical)

FINAL Order No. 426/10-EX Dated : ______________

Per. Justice R.M.S. Khandeparkar :-

Heard at length the learned advocate for the appellants and learned DR for the respondent. Perused the written submissions filed by both the parties.

2. The appellants were engaged in manufacture of various types of Ferro Alloy products classifiable under chapter sub-heading 7202.00 of the Central Excise Tariff Act 1985 and were availing Modvat credit facility under the erstwhile Central Excise Rules, 1944.

3. It is the case of the respondent that on the receipt of an intelligence report that the appellants were engaged in evasion of Central Excise Duty, the officers of the department kept surveillance upon the factory of the appellants and on 4th July 1997 they intercepted a truck bearing No. MP – 25B - 0003 which was found transporting Ferro Manganese Slag (Fe Mn Slg) outside the factory premises of the appellants. The said consignment was not accompanied by proper documents revealing discharge of duty liability. Secondly, the investigation commenced and on conclusion thereof a show cause notice dated 1/1/98 came to be issued to the appellants requiring the appellants to show cause as to why the duty amounting to Rs.

493.76 should not be recovered in relation to 15.430 M.T. of Ferro Manganese Slag valued at Rs. 6,172/-, why the said truck should not be confiscated for having found transporting Ferro Manganese Slag in contravention of the provisions of law, and Central Excise Duty amounting to Rs. 6,30,334.65 in relation to 207.711 M.T. of Ferro Manganese Standard Grade and Ferro Manganese Powder valued at Rs. 42,02,231/- which was found short in the factory of the appellants on 4th July 1997 should not be recovered, besides demanding the interest and imposing penalty. The notices were also issued to the authorised signatory, truck driver and owner of the truck. The proceedings were contested by the appellants and ultimately by the order dated 28th March 2003, the Additional Commissioner confirmed the duty liability to the extent of Rs. 493.76 in relation to quantity of Ferro Manganese Slag illegally transported through the truck, duty liability to the extent of Rs. 6,30,334.65 in relation to shortage of the product in the factory and ordered payment of interest on the said amount and also imposed penalty as specified in the order. Being dissatisfied, the matter was carried in the appeal before the Commissioner (Appeals), which came to be dismissed by impugned order dated 30th March 2004. Hence the present appeal.

4. It is the case of the appellants that there was no clandestine removal of the goods by the appellants and the alleged shortage was worked out on the basis of production recorded in the appellants own private records which were

produced to the officers of the respondent during their visit to the premises on 04/7/97. It is their case that the RG-1 register entries were recorded only on screening, grading and packing of Ferro Manganese and, therefore, when the goods remained in the heaps of sands in loose condition, the same were unfinished product and, therefore, were not entered in RG-1 register. It is their case that the production having been ascertained from the private records of the appellants, which was subsequently entered in the RG-1 register for removal thereof on payment of duty, there was no case for alleging clandestine removal. According to the appellants, the Department having totally ignored the fact that the RG-1 register was completed as and when the product was finally packed and was removed for clearance, there was no case for allegation of clandestine removal of the goods by the appellants. It is their case that the fact that unfinished goods were stored in the heaps of sands was not at all considered by the Department.

5. The authorities below on consideration of the materials on record arrived at the finding that on physical verification of the materials in the factory premises of the appellants conducted by the officers on 4th July 1997, it was revealed that the RG-1 register was found recorded upto 31st May 1997, whereas the private record disclosed recording of production upto 1st July 1997 and taking into consideration the entries which were found in the RG-1 register on 31st May 1997 alongwith the production entries upto 1st July 1997 in the private records, and comparing

the same with the records regarding the clearance of the product in terms of invoices issued under Rule 52A, the following situation was revealed :

S. No.	Description of goods	C.B. as on 31.5.97 as per RG-1 (MT)	Production of 6/97 & 1.7.97 as per Private Production register (MT)	Total (MT)	Clearance as per inv. Issued under Rule 52A (MT)	C.B. as on 3.7.97 which should have been entered in RG-1 register (MT)
1	Ferro Manganese Standard grade	261.087	343.000	604.087	383.431	220.656
2.	Ferro Manganese off grade	16.205	20.000	36.205	NIL	36.205
3.	Ferro Manganese (Slag Contaminated)	0.200	NIL	0.200	NIL	0.200
4.	Ferro Manganese Powder	15.000	27.205	42.205	18.600	23.605
5.	Ferro Manganese Slag	341.958	440.250	782.208	525.695	256.513

It was further revealed pursuant to the physical verification of the products in the factory premises of the appellants as also consequent to the Panchnama carried out of whatever found in the stock in the factory premises and on inquiry with the authorised signatory of the appellants namely Shri Hemant Sial, the stock position was revealed as under :-

S. No.	Description of the goods	Stock which ought to be on 4.7.97 (MT)	No. of Bags	Quantity in each Bag	Stock of goods found on physical verification (MT)	Difference in stock found in comparison with RG-1 stock (MT)
1	Fe Mn	220.656			47.100	173.556

						(Short)
	Standard grade					
2.	Fe Mn Off grade	36.205			36.205	Nil
3.	Fe Mn Slag contaminated	0.200			0.200	Nil
4.	Fe Mn Powder	23.605			16.250	7.355 (short)
5.	Fe Mn Slag	256.513			256.513	Nil

Taking into consideration the production which was carried out on 2nd and 3rd of July 1997 and the factual situation on 4th July 1997, it was revealed as under :-

S. No.	Description of goods	Closing balance as on 3.7.97 which should have been entered in RG-1	Stock found on physical verification on 4.7.97	Difference
1.	Ferro Manganese Standard Grade	246.856	47.100	199.756 (short)
2.	Ferro Manganese Off Grade	36.205	36.205	NIL
3.	Ferro Manganese (Slag contaminated)	0.200	0.200	NIL
4.	Ferro Manganese Powder	23.605	16.250	7.355 (short)
5.	Ferro Manganese Slag	256.513	256.513	NIL
				207.111 M.T. (short)

6. Pursuant to the investigation and based on the materials placed on the records before the authorities, on assessment thereof, the authority came to the finding that there was a shortage of 199.7756 M.T. of Ferro Manganese Standard Grade and 7.355 M.T. of Ferro Manganese Powder. The said finding which was arrived at by the Adjudicating Authority has been duly confirmed by the Commissioner (Appeals), in the impugned order

while further agreeing with the observations by the Adjudicating Authority to the effect that :

> "Had goods found short on physical verification were entered in RG-1 register and were contained in the said Heap as pleaded by the appellants, the book stock of Ferro Manganese Standard Grade and Powder would never have gone below the said difference. Their RG-1 register clearly show that on number of the stock position, as per RG-1 register had gone down upto 2 to 3 M.T."

This confirmation has been made while dealing with the appellant's case that there was a big heap of Ferro Manganese Slag that contained Ferro Manganese, i.e. their finished production which could not be retrieved during the period November 1995 to July 1996 and was shown as production in their production register and that subsequently they had retrieved 170.750 M.T. of Ferro Manganese Slag from the said heap and therefore the said quantity of the finished goods ought to have been incorporated in the physical stock of the finished goods ascertained on 4th July 1997.

7. The learned advocate appearing for the appellants while assailing the impugned order submitted that there is absolutely no case made out by the department of either clandestine removal or of excessive stock and the findings arrived at by the authorities below are not borne out from the records. He further

submitted that the purpose of private record was to keep check on the stocks and to have a rough idea of the estimate of the final production on the basis of the product which comes out of the use of furnace. He further submitted that the products which were yet to be completed in all respects were stored in the heap of sands and it is only when they are ready for clearance, the same were entered in the RG-1 register. Till then, record thereof was maintained in the form of private records. Considering this aspect, according to the learned advocate, there was no case of any clandestine removal of the final product. He further submitted that the department failed to collect cogent evidence to support their allegation of clandestine removal of the goods by the appellants. No buyer records were verified, neither the respondents had examined any transporters who might have transported the allegedly clandestinely removed goods. There is nothing to show excess consumption of electricity, which could corroborate higher production and there was no excessive intake of raw materials to substantiate the allegation of clandestine manufacture and removal of final product.

8. The learned department's representative on the other hand submitted that the scrutiny of the records including RG-1 register alongwith the records pertaining to the availability of the stock on physical verification thereof at the time of inspection clearly reveal that the findings arrived at by the authorities below are clearly borne out from the records. Drawing our attention to the charts which have been prepared and reproduced in the order

passed by the Adjudicating Authority, he submitted that the same are in consonance with the records which were seized in the course of the inspection in the premises and that the fact that the seized records clearly reveal the facts and figures as are found in the said charts is also not in dispute. Being so, according to the respondent, there is no case for interference in the findings arrived at by the authorities below regarding clandestine removal of the goods.

9. As rightly pointed out by the department's representative and not controverted on behalf of the appellants, besides being an undisputed fact that the calculations made by the authorities below in relation to quantity of the final product as well as raw materials which was available in the factory premises of the appellants on 4th July 1997 was based on the records, which were available in the factory premises of the appellants. Such records include RG-1 register as well as private records maintained by the appellants. It is pertinent to note that the private records were made available by the appellant's authorised signatory himself to the departmental officers at the time of inspection and the entries in the private records are not disputed by the appellants at any point of time. Obviously, therefore, nothing is brought to our notice which could create any doubt regarding the calculations made by the department on the basis of entries found in the said private records and RG-1 register. As already noted above, the charts which have been prepared on the basis of such records seized in the course of the inspection clearly

revealed the total quantity of the final product manufactured by the appellants available in the premises at the time of inspection of the premises. The same also discloses total quantity of the raw material available in the premises. Both the quantities were tallying with the records as maintained by the appellants. Having compared this record with the invoices which were issued under Rule 52A and taking into consideration the available stock in the premises on the day of inspection, indeed, as rightly pointed out by the learned representative of the department, we find no case for interference in the calculations made by the authorities below and the findings based thereon.

10. The contention of the appellants that private records were merely for the purpose of disclosing the goods in unfinished form and/or the estimate of the final product do not find any support from the materials on record. It is to be noted that the private records were maintained by the appellants themselves. The entries therein are not disputed by the appellants. The entries therein tally with the stock, which was available in the premises and physically verified by the departmental officers in the presence of the authorised signatory of the appellants. In fact, the appellants had never raised the plea either before the Adjudicating Authority or before the Commissioner (Appeals), or even in the memo of appeal that the entries in the private record were merely relating to the estimate of the production. On the contrary, the entries therein were never disputed and were duly confirmed in the course of the statement given by Shri Hemant

Sial. Being so, it is difficult to accept the contention on behalf of the respondent that there was no material to arrive at the finding about clandestine manufacture and removal of the goods by the appellants.

11. It is true that the respondent had not conducted any investigation in relation to buyers of such final product, nor in relation to the transporters, nor there is evidence collected in respect of electricity consumption as well as of any excess intake of raw materials. However, the fact remain that the entries in the private records maintained by the appellants themselves are neither disputed nor shown to be referring to any other material or having been made pertaining for any other purpose. It is settled law that to establish any charge or accusation, it is not the quantity of the evidence but it is the quality of the evidence which is material. Beside, once the basic facts which are relevant to establish the clandestine manufacture and removal of the final product are not disputed by the manufacturer, the question relating to the absence of further corroborating evidence does not arise. Once it is the case of the appellants themselves that they had maintained detailed records pertaining to the production in the factory and such records having been produced, which apparently revealed certain quantity of production of goods having been suppressed and not disclosed in the statutory records, it certainly amounts to discharge of the initial burden of the department in establishing the case of the department about clandestine manufacture and removal of the goods by the

manufacturer. The onus then shifts upon the manufacturer to establish that the entries in such private records do not relate to the production in the factory or that the entries do not relate to manufacture and removal of the goods. In the case in hand, the appellants have totally failed to discharge his onus. In such circumstances, the question of further evidence in the form of buyer's records or transporters examination or electricity records or record pertaining to excessive raw material need not be referred to.

12. It is also sought to be contended that the department has also ignored the materials which were stored under the heap. The contention in this regard does not appear to be correct. As already pointed out above, the charts which have been prepared by the Adjudicating Authority before arriving at the finding about the clandestine manufacture and removal of the final product the authorities clearly referred to the records, which were seized in the course of inspection as well as records relating to physical verification of the materials available in the factory premises. There is clear observation to that effect prior to the calculations which were made based on such materials found in the premises. Being so, it is difficult to accept the contention that the unfinished products which were lying under the heap were not considered while arriving at the final figure by the authorities below.

13. In the facts and circumstances of the case, therefore, we do not find any case for interference in the impugned order and hence the appeal fails and is dismissed.

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Member (Technical)

PK