TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

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/483 /2009,867 /2009 – SM[BR] Date 11/11/2010

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

To :
M/S STAR STEELS,
B-11/1, INDUSTRIAL AREA, NADARGANJ,
LUCKNOW-226008.

M/S STAR STEELS, Appellant
Vs
C.C.E. LUCKNOW Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1214 – 1215 / 2010-SM[BR] dated 15.10.2010 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
   MR.R.S. SHARMA, ADV.,
   C-9/9656, VASANT KUNJ, NEW DELHI 110070
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)

3. M/S STAR STEELS ,
B-11/1, INDUSTRIAL AREA, NADARGANJ, AMOUSI,
LUCKNOW.

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No. 2, R.K. Puram,
New Delhi

COURT No. II

CENTRAL EXCISE APPEAL NO. 483 & 867/09-SM

[Both arising out of Order-in-Appeal No. 236-CE/LKO/2008 dated 29.12.2008 passed by the Commissioner of Customs & Central Excise (Appeals), Lucknow]

M/s. Star Steels — Appellants
Reptd. by Shri R.S. Sharma, Advocate

Versus

CCE, Lucknow — Respondent
Rept. By Shri R.K. Gupta, SDR

Date of Hearing/decision: 15th October, 2010

Coram: Hon'ble Shri D.N. Panda, Judicial Member;

FINAL ORDER NO. 1214-1215/2010 SM (BR) DATED

Per D.N. Panda:

Appeal of assessee arose out of consequences of the appellate order upholding the demand of excise duty in respect of shortage of finished goods of 40.650 M.T. Revenue's appeal is against waiver of demand in respect of shortage of raw material of 5.111 M.T. found during investigation made on 23rd August, 2006. The appellate order exhibits that investigation was completed at 8 P.M.

Till that time the goods said to have been cleared in terms of invoice No. 64 & 68 dated 23.8.2006 were not produced before Investigating Officers. Hence, demand arose against assessee in respect of shortage of finished goods of 40.650 M.T. In respect of shortage of raw material of 5.111 M.T. appearing in Annexure 'B' to panchnama, that was held to be minor discrepancy and may reasonably arise for which he concluded that the appellants should not face duty demand of Rs. 12,511/- on such discrepancy and so also no penalty.

2. Learned Counsel appearing today submits that within one week of investigation the appellants filed excise return and brought out the fact of clearance of the finished goods weighing 39.485 M.T. in terms of invoice No. 64 & 65 dated 23.8.2006. Shri Mohd. Yusuf on being interrogation during the course of investigation was unable to explain clearance of the goods. But the fact remains is that there was clearance of the above goods. Apart from that, the appeliants had also paid excise duty on the clearance made. The Appellant could not get any assistance from his staff to explain to the authority about the shortage of 40.650 M.T. Actually there was no

shortage, Alleged shortage quantity of 39.485 M.T. were cleared in terms of invoice No. 64 & 65 dated 23.8.2006 and that had gone out of factory before initiation of investigation. He further submits that learned Commissioner (Appeals) having considered the reasonable shortage which usually occurs in the course of normal business allowed appeal partly. But in view of merits of appellant against the demand relating to finished goods may be annulled.

3. Learned D.R. supports the order of the authority below in respect of confirmation of demand on finished goods. But he agitates against the waiver of demand on raw material shortage.

4. Heard both sides and perused the record.

5. There is no dispute that shortages were detected by investigation team on 23.8.2006. There is no evidence on record to show the time of clearance of goods from the factory in terms of invoice NO. 64 & 65 dated 23.8.2006. Such crucial issue brought the appellant to the litigation. Had the time of clearance been substantiated and had that been brought to the notice of the investigating team, the appellants would not have faced the adjudication.

There is nothing on record to show that the appellants took any step to inform the authorities on the day following the investigation. It remained silent till 31^{st} August, 2006 to inform to the authorities about the clearance of the goods in terms of invoice No. 64 & 65 as aforesaid. There was good lapse of time to cover the lapse. The appellant did not bring any evidence on record about the receipt of the goods and the time of receipt thereof at the buyer's end to prove bona fide. Rather the appellant deprived the investigating team to get third party confirmation forthwith about the clearance under invoice No. 64 & 65 both dated 23.8.2006. When the appellant did not come forward with clean hands it is handicapped to claim relief now. In view of Such observation appeal of the assessee is dismissed.

6. So far as the Revenue's appeal is concerned the reasons stated by the learned Commissioner (Appeals) to waive the demand in respect of shortage of raw material of 5.111 M.T. appears to have substance. He had examined the conversion ratio and came to a nearest conclusion. But it may be stated that if the goods are under B.I.S specification, the B.I.S. has prescribed

conversion formula. The appellate authority did not look from that angle. However, having arrived at a very negligible discrepancy it would not be proper to disturb the order of the Commissioner (Appeals) on the limited issue of shortage of raw material. Accordingly, Revenue's appeal is also dismissed.

7. In the result both the appeals are dismissed.

(Dictated & pronounced in the Open Court.)

(D.N. PANDA)
JUDICIAL MEMBER

RK