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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/107 - 109 /2009 – SM [BR] Date 18/11/2010

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

To :
C.C.E. LUCKNOW

7-A, ASHOK MARG, LUCKNOW.

C.C.E. LUCKNOW Appellant

Vs

M/S L.D.GOYAL STEELS PVT. LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.**1272 – 1274 /2010-SM[BR] dated 9.11.2010 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent

M/S L.D.GOYAL STEELS PVT. LTD.

PLOT NO. B-6870, TALA NAGRI, RAMGHAT ROAD, ALIGARH.

2. Adv. / Consult SHRI RAJ KUMAR C.A.
M/S RESPONDENT:------------------

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)

१. M/S SOM DUTT GOYAL, M.D,
M/S L.D.GOYAL STEELS PVT. LTD. PLOT NO.
B-6870, TALA NAGRI, RAMGHAT ROAD, ALIGARH.

२. M/S MANKAMESHWAR STEELS PVT. LTD.
B-71-72, SECTOR-II,TALA NAGRI, ALIGARH.

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R. K. Puram, New Delhi
COURT-IV

Date of hearing: **2.11.2010**
Date of Pronouncement : 9.11.2010

Excise Appeal No. 107 – 109 of 2009 , E/CO/57-61/2009-SM

[Arising out of order-in-Appeal No. 96-98A-CE/LKO/08 dated 30.9.2008 passed by the Commissioner (Appeals), Central Excise & Service Tax, Lucknow]

For approval and signature:

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982.	No
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?	No
4	Whether Order is to be circulated to the Departmental authorities?	Yes

CCE, Lucknow Appellant

Vs.

(1) M/s L.D. Goyal Steels (P) Ltd. Respondent
(2) M/s Som Dutt Goyal, M.D.
(3) M/s Mankameshwar Steels (P) Ltd.

Appearance:

Appeared for the Appellant - Shri Anil Khanna, SDR

Appeared for the Respondent - Shri Raj Kumar, C.A.

Coram: Hon'ble Mrs. Archana Wadhwa, Member (Judicial)

Final Order No. 1272 – 1274 / 2010 SM(BR)

Per Archana Wadhwa :

All the three appeals filed by Revenue are being disposed off by a common order as they arise out of the same impugned order passed by the Commissioner (Appeals).

2. I have heard Shri Anil Khanna, ld. DR appearing for appellant and Shri Raj Kumar, ld. Counsel appearing for respondent.

3. As per the facts on record M/s L.D. Goyal Steels Pvt. Ltd. are engaged in the manufacture of M.S. angles. Their factory was visited by the Central Excise officers on 12.10.2006, who conducted various checks and verifications. As a result shortage of 120.695 MT of M.S. angles involving Central Excise duty of Rs.2,80,209/- was detected. Shri L.D. Goyal, Managing Director, admitted such shortages and deposited the duty in question on 13.10.2006.

During the search, it was also noticed that stock of raw material i.e. M.S. ingots was found in excess to the extent of 42.715 MT than the recorded balance in the statutory records. The same was seized by the officers.

In addition 10.000 MT of scrap valued at Rs.1.60 lakhs generated during course of manufacture of finished goods was found lying in the adjacent premises of M/s Mankameshwar, the Director of M/s Mankameshwar Steels Pvt. Ltd. deposed in his statement that the said scrap was sold by M/s L.D Goyal Steels Pvt. Ltd. with the cover of excise document are without payment of duty. However the appellant's Director, in his statement maintained that no such scrap was sold by them to M/s Mankameshwar Steels Pvt. Ltd..

4. On the above basis, proceedings were initiated against the respondents for confirmation of demand of duty, for confiscation of the excess found raw material and for confirmation of demand of

duty on the scrap. The notice also proposed imposition of penalty on the respondents. The said Show Cause Notice culminated into an order by original adjudicating authority vide which the confirmed demand of duty of Rs.2,80,209/- in respect of clandestinely removed final product along with imposition of penalty of identical amount. In addition duty of Rs.26,112/- was confirmed in respect of scrap found in the premises of M/s Mankameshwar Steels Pvt. Ltd. along with imposition of penalty of identical amount. The original adjudicating authority also confiscated unaccounted M.S. ingots valued at Rs. 6.83 approximately with an option to the appellant to redeem the same on payment of redemption of Rs. 2.00 lakhs. In addition penalty of Rs.3.00 lakhs was imposed on Shri S.D. Goyal, Managing Director and of Rs.25,000/- on M/s Mankameshwar Steels Pvt. Ltd. under Rule 26 of the Central Excise Rules.

5. On appeal against the above order, the appellant did not challenge the confirmation of demand of Rs.2,80,209/- confirmed on the findings of clandestine removal of their final product. However, they submitted that in as much as the said duty was deposited before issuance of the Show Cause Notice, no penalty should be imposed upon them.

6. The Commissioner (Appeals) vide his impugned order accepted the above stand of the appellant and by following the Supreme Court's judgement in the case of **Rashtriya Ispat Nigam Ltd.** reported in 2004 (163) ELT A-53 held that the penalty is not required to be imposed in case of deposit of duty before the issuance of Show Cause Notice. He also observed that there is no corroborat~~ed~~ve evidence to substantiate the findings of the

clandestine remove. He accordingly set aside the penalty on M/s L.D. Goyal Steels Pvt. Ltd.

7. I find that the above issue is no more res integra and stands settled by the Hon'ble Supreme Court's decision in the case of **Dharmendra Textile Procesors** reported in 2008 (231) ELT 3 (SC). Further, the appellant have admitted their duty liability in respect of clandestine clearance of their final product and as such it was not open to Commissioner (Appeals) to observe that there is no evidence of clandestine removal of finished goods. It is to be noted that the Commissioner (Appeals) has confirmed the demand of duty on the above ground as the same was not challenged by the appellant. In the above factual background, and in view of the law laid down by Hon'ble Supreme Court, the penalty to the extent of 100% of duty evaded is required to be imposed. Accordingly, I set aside the said part of Commissioner (Appeals) order and restore the order of the Assistant Commissioner imposing penalty of Rs.2,80,209/-.

However, I note that while imposing on the penalty, the original adjudicating authority has not extended any option to the assessee to pay 25% of penalty within a period of 30 days from passing of the order. The Tribunal in the case of **Swati Chemicals & Others** reported in 2009 (94) RLT 684 and the Hon'ble High Court's judgement in the case of **M/s Exotic Associates Vs. CCE** reported in 2010 (252) ELT 49 has held that where no such option has been given by the authorities below, such an option can be extended by the Tribunal. In view of above, I hold that if the appellant deposit the entire dues along with 25% of penalty within a period of 30 days from passing of the present order, the penalty shall stand reduced to 25% of the duty amount.

8. The Commissioner (Appeals) has further set aside the confiscation of the excess found ingots on the ground that Rule 25 of Central Excise Rules 2002 is applicable to the final product and not to the raw material. As such, by relying upon various decisions of the Tribunal, he observed that M.S. ingots, not being goods manufactured by the assessee, cannot be confiscated.

I agree with the reasoning of Commissioner (Appeals). Merely because the ingots, which is a raw material for the respondent, do not stand entered in the statutory records, by itself cannot be held to be justifiable reason for their confiscation. The various decisions relied upon by Commissioner (Appeals) in the impugned order, support the above view. Accordingly, Revenue's appeal against the said part of the order of Commissioner (Appeals) is rejected.

9. As regards confirmation of duty of Rs.26,112/- in respect of M.S scrap found in the premises of M/s Mankameshwar Steels Pvt. Ltd. the appellate authority has observed that the Revenue's case is based on the sole statement of the Director of M/s Mankameshwar Steels Pvt. Ltd. The Director of M/s L.D. Goyal Steel Pvt. Ltd. have not accepted any sale of scrap to M/s Mankameshwar Steels Pvt. Ltd. and have denied any removal, on the spot statement. There being no other evidence corroborating such removal, he has held in favour of the respondents.

I fully agree with the above reasoning of the appellate authority. Admittedly, the entire case of the Revenue for clandestine clearance of scrap is based upon the sole statement of the Director of M/s Mankameshwar Steels Pvt. Ltd. The assesses own statement is contrary to the statement of the authorised representative of M/s Mankameshwar Steels Pvt. Ltd. No reasons stand advanced by the Revenue to as to why the statement of M/s Mankameshwar Steels Pvt. Ltd. should be preferred over the statement of M/s L.D. Goyal Steel Pvt. Ltd. Admittedly, there is no other evidence in support of the Revenue's allegation of clandestine removal of scrap. In such a scenario, the benefit stands rightly extended by Commissioner (Appeals). Accordingly, I find no infirmity in his views for setting aside the demand of duty of Rs.26,112/- along with penalty. Revenue's appeal against the above part of impugned order is rejected.

10. As regards the other appeals filed by the Revenue, I find that the same are against reduction of penalty on the respondents. For better appreciation, I re-produce the relevant part of the order of the Commissioner (Appeals) as under :-

> "All the aspect of the case and appeal has been discussed in this order and it is proved that the firm of Appellant No. 2 have cleared finished products involving Central Excise duty of Rs.2,80,209/- without issuing Central Excise invoice. The appellant's plea in this regard that it is due to oversightness is not justified. As there is no room for any relaxation as far as the compliance of law is concern and if attracts penal action against Appellant No. 2, however other two charges regarding penalty of storage of excess raw material as well as scrap sold without payment of duty is not sustainable in the eyes of law. Thus no peal action is warranted on account of these two charges. Therefore in light of above findings a penalty of

Rs.3,00,000/-appears to be harsh on Appellant No. 2 and I reduce the same to Rs.1,00,000/-."

11. As I have already allowed the Revenue's appeal enhancing the penalty on M/s L.D. Goyal Steel Pvt. Ltd., I do not find any reasons to enhance the penalty on the Managing Director of the said company. Accordingly, the Revenue's appeals against the said respondents are rejected.

12. In a nutshell, the penalty on M/s L.D. Goyal Steel Pvt. Ltd. is increased to 100% of duty amount with an option to pay 25% within a period of 30 days from passing of the present order. Revenue's appeal is allowed to that extent. The appeals filed by the Revenue challenging the other part of the impugned order in respect of the M/s L.D. Goyal Steel Pvt. Ltd. has also filed against other respondents are rejected.

(Pronounced in the open Court on 9/11/10

(ARCHANA WADHWA)
MEMBER (JUDICIAL)

RM