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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/1797/2008 – SM[BR] Date 30/07/2010

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 SARADA STEEL INDUSTRIES LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 838 / 2010 –SM[BR] dated 21.7.2010 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 SARADA STEEL INDUSTRIES LTD.
   UPSIDC, INDUSTRIAL AREA, MALWAN, FATEHPUR (UP)
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 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)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

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

COURT-III

SINGLE MEMBER BENCH

Date of hearing/decision: 21.7.2010

Central Excise Appeal No.1797 of 2008-SM

Arising out of the order in appeal No.60-CE/LKO/08 dated 28.04.2008 passed by the Commissioner (Appeals), Central Excise & Service Tax, Lucknow.

For Approval and Signature:

Hon'ble Shri M. Veeraiyan, Technical Member

1	Whether Press Reporter 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 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

C.C.E., Kanpur .... Appellant

Vs.

M/s Sarada Steel Industries Ltd. .... Respondents

Appearance:

Shri I. Baig, Authorised Departmental Representative (SDR) for the Revenue and Shri Bipin Garg, Advocate for the respondents

Coram: Hon'ble Shri M. Veeraiyan, Technical Member

Final Oral Order No. 838/2010 SM(BR)

Per M. Veeraiyan:

This is an appeal by the Department against the order of the Commissioner (Appeals) setting aside the order of the original authority in so far as the same relates to M/s Sarada Steel Industries Ltd.

2. Heard both sides.

3. The relevant facts, in brief, are that the Officers of DGCEI and Central Excise Commissionerate, Kanpur searched the factory premises of the respondents and other connected premises. They conducted stock taking verification of the finished goods. By inspection and weighment of CTD bars and MS ingots, they found physical stock of CTD bars of 759.9 MT whereas the stock shown in the RG-1 register was only 656.505 MT. They also found 30 MT of scrap as against the recorded stock of 22.360 MT. The officers also , according to the learned SDR, seized incriminating documents indicating suppression of production and clandestine removal. In pursuance of the show cause notice, the original authority ordered confiscation of 103.395 MT of CTD bars valued at Rs.17,06,017/- and 7.640 MT of scrap valued at Rs.67,232/- but allowed the same to be redeemed on payment of fine of Rs.4,44,000/-. He also imposed penalty of Rs.2,17,046/- on the respondent under Rule 25 of Central Excise Rules, 2002 for violation of Rule 10 of the Central Excise Rules, 2002 [The order of the original authority relates to another party and the same is not relevant to the present proceedings]. The Commissioner (Appeals), on appeal by the party, set aside the order of confiscation and imposition of penalty. Hence the Department is in appeal.

4. Learned SDR submits that the stock taking was conducted by weighing the stock in the presence of independent witnesses and in the presence of authorised signatory of the respondent company. After several months, when the statement was taken on 28.4.05, Shri Vinay Bhasin, authorised signatory of the respondent company clearly admitted the excess stock and was not in a position to offer any explanation for the excess stock. Therefore, the goods were clearly offending in nature as the same were not entered in the production records. Considering the circumstantial evidence, the finding of the original authority that the excess found goods were meant for clandestine removal was also justified. Therefore, he seeks setting aside the order of the Commissioner (Appeals) and restoration of the order of the original authority.

5. Learned Advocate for the respondents submits that, as rightly pointed out by the Commissioner (Appeals), the method adopted for ascertaining the

excess of finished goods have not been indicated; weighment sheets have not been prepared and attached; it was not practically possible that the weight of each piece of CTD bars were taken in a span of 9 hours 15 minutes when the officers were present in the factory. In other words, the excess stock alleged has to be treated only as notional and not as actual and based on eye estimation. He also submits that even if the goods were found to be excess, the finding of the original authority that they were kept for clandestine removal was based on presumption and such presumption was not warranted. He also submits that the alleged excess found goods were within the factory and there is no justification for confiscation as held by several decisions of the Tribunal as noted by the Commissioner (Appeals).

6. I have carefully considered the submissions from both sides. It is not disputed that the stock taking has been done in the presence of independent witnesses and in the presence of authorised signatory on 5.11.04. There has not been any representation alleging that the stock taking was not conducted properly and the claim has been made for the first time in reply to the show cause notice. It is not the case of the respondent that they are manufacturing very many varieties of CTD bars, each one having different dimensions and consequently, the weight of each and every piece is different. It is common knowledge that the CTD bars are meant for specific application and each variety has fairly accurate weight and the variation in weight in respect of any variety of bars cannot differ widely in which case, the same maynot be acceptable to the customers. It is also not the case of the respondent that they have individually weighed each CTD bars before entering in RG-1 register. Under these circumstances, the correctness of panchanama drawn on the basis of weighment taken cannot be doubted without adducing any valid reason. The Commissioner (Appeals) has held that it was practically impossible for ~~that~~ weighing of each piece of CTD bars ~~was possible~~ within 9 hrs. and 15 minuites. Such a finding is based on presumption that each piece was required to be weighed which is not warranted in the nature of the goods. The Commissioner (Appeals) has failed to notice that there was no representation against the correctness of

the panchanama by the respondent company for several months. Merely because the respondent company has doubted the panchanama in the reply to the notice, the same should not have been accepted in the absence of any valid reason. I have not been shown any retraction of the statement given by the authorised signatory. In view of the above, the irregular maintenance of accounts by not entering correctly the quantum of goods manufactured is clearly established attracting provisions of Rule 25(1)(b) of the Central Excise Rules, 2002. However, the finding of the original authority that the said goods were kept for clandestine removal has been rightly found to be erroneous as the same would be only a presumption. In view of the above, the order of the Commissioner(Appeals) in setting aside the order of confiscation and setting the penalty are not justified. Therefore, the order of the Commissioner (Appeals) is set aside and the order of the original authority is restored. However, considering the entire facts and circumstances of the case, some leniency in the matter of quantum of redemption fine and penalty is justified.

7. In view of the above, the appeal by the Department is partly allowed and the order of Commissioner is set aside and the order of the original authority is restored with the following modification:-

a) Confiscation of the excess found goods is upheld but the redemption fine is reduced from Rs.4,44,000/- to Rs.2,50,000/-.

b) Penalty imposed on M/s Sarada Steel Industries Ltd. is reduced from Rs.2,17,046/- to Rs.1,00,000/-.

(M. Veeraiyan)
Technical Member

scd/