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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/460 /2008,595 /2008 – SM[BR] Date 17/08/2010

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

To :
M/S MAITRI STEELS LTD.
FLAT NO. F-3 & F-4, AISHWARYA KUNJ, RAVE MOTI,
GUTIYA, RAWATPUR, SARVODAYA NAGAR
KANPUR- (U.P.)

M/S MAITRI STEELS LTD. Appellant

Vs

C.C.E. KANPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 883 – 884 / 2010-SM[BR] dated 12.8.2010 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.R. SANTHANAM
   C-3/210, JANAK PURI, NEW DELHI - 110 058.

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

2. SH. SURESH CHANDRA VERMA, AUTH. SIGNATORY.
M/S MAITRI STEELS LTD.FLAT NO.F-3 & F-4,AISHWARYA
KUNJ,RAVE MOTI, GUTIYA, RAWATPUR, SARVODAYA NAGAR KANPUR

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing: 17/3/2010
Date of Decision: 12/8/2010

For approval and signature:

Shri Rakesh Kumar, Member (Technical)

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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? :

Excise Appeals Nos.E/460/08-SM (BR) and E/595/08-SM (BR)

(Arising out of common Order-in-Appeal No.213-CE/APPL/KNP/2007 dated 31.05.2007 passed by the Commissioner of Central Excise, Kanpur)

(1) M/s. Maitri Steels Ltd.
(2) Shri Suresh Chand Verma, Authorised Signatory **Appellants**

Vs.

CCE, Kanpur **Respondent**

CORAM: **Hon'ble Mr. Rakesh Kumar, Member (Technical)**

Final Order No. 883-884/2010 SM(Br)/Dated: 12/8/2010

Appearance: Shri R. Santhanam, Advocate appeared for the appellants.
Shri I. Baig, SDR appeared for the respondent/Deptt.

Per Rakesh Kumar:

The facts leading to these two appeals, are in brief, , as under:-

1.1 The appellant-company having a factory in village Bhawanipur, Mandhana, Kanpur, are engaged in the manufacture of MS Strips, CRF Sections, End Cuttings, etc. chargeable to central excise duty under sub-Heading Nos.7216.20, 7211.59 of the Central Excise Tariff Act. On 25.08.2004, during the course of patrolling by the officers of central excise (preventive), Kanpur, a truck bearing registration No.UP78B 2943 loaded with CRF Sections was found parked in front of M/s. Sabbarwal Factory, Mandhana, Kanpur. On being asked, the driver of the truck, Shri Kamlesh produced an Invoice no.222 dated 24.08.2004 for 9.210 MT of CRF Sections, issued by the Appellant Company to one M/s. Bharat Ispat, Lucknow, wherein the date of removal was shown as 24.08.2004 and time for removal was shown as 19.35 hours. On being asked, Shri Kamlesh, the Driver of the truck in his statement dated 25.08.2004 stated that earlier on 24.8.2004 he had delivered a consignment of CRF Sections to M/s. Bharat Ispat, Nadarganj, Lucknow under the same invoice and this was the second consignment loaded in the truck, which had been cleared under the same invoice. On weighment of the goods loaded in the truck, the weight was found to be 10.335 MT, as against the weight of 9.210 MT mentioned in the invoice. It, thus, appeared that the goods loaded in the truck had been cleared without payment of duty by adopting modus operandi of using the same invoice twice. In the follow-up action, the Central Excise Officers on the same day visited the factory of the appellant company and on physical stock taking, shortage of about 11.195 MT of CRF Sections involving duty of Rs.26,196/- and shortage of about 0.150 MT of M.S. Strips involving duty of Rs.342/- was detected. Shri Suresh Chand Verma, Authorised Signatory of the Appellant Company in his statement recorded at that time under Section 14 of the Central Excise Act, accepted the shortage of the CRF Sections and MS Strips and stated that the goods found loaded on truck no.UP78B 2943 on 25.08.2004 had been cleared from his factory without cover of invoice and without accountal in the statutory records. In view of this, the goods loaded in the truck along with the truck were placed under seizure. However, subsequently on an application having been filed by the applicant for the provisional release, the same were released provisionally on furnishing of a bond dated 1.9.2004 for Rs.2,01,532/- backed by cash security in form of STDR No.804495 dated 31.08.2004 for an amount of Rs.50,400/- for the seized goods and another bond dated 1.9.2004 for Rs.5 Lakhs duly backed by cash security in the form of STDR No.804496 dated 31.08.04 for Rs.1,000/- for the seized truck. A show cause notice dated 20.01.2005 was issued for (a) demand of duty amounting to Rs.24,668/- on the goods seized from the truck along with interest on the duty; (b) seizure of the truck; (c) demand of central excise duty of Rs.27,069/- along with interest in respect of the goods found short in the factory, (d) imposition of penalty on the Appellant Company under Section 11 AC of the Central Excise Act and (e) imposition of penalty on Shri Suresh Chand Verma, Authorised Signatory of the unit of the Appellant Company under Rule 26 of the Central Excise Rules, 2002. The show cause notice was adjudicated by the Asstt. Commissioner vide order-in-original dated 29.12.2006 vide which (a) the duty demand of Rs.24,668/- in respect of the goods seized from the truck and duty demand amounting to Rs.27,069/- in respect of the goods found short in the factory was confirmed along with interest, (b) penalty of Rs.27,069/- was imposed on the appellant company under Section 11 AC of the Central Excise Act; (c) penalty of Rs.10,000/- was imposed on Shri Suresh Chand Verma, Authorised Signatory of the appellant company under Rule 26 of the Central Excise Rules and (d) the goods along with the truck was ordered to be confiscated and since the goods had already been released against provisional release bond, the appellant company was asked to pay redemption fine of Rs.5,000/- in terms of the conditions of the bond and Shri Kamlesh, Driver of the truck was directed to pay an amount of Rs.1,000/- in terms of the conditions of the bond.

1.2 The appellant company and the Authorised Signatory of the Company, Shri Suresh Chand Verma filed appeal to the Commissioner (Appeals) against the Asstt. Commissioner's order and the Commissioner (Appeals) by order-in-appeal dated 31.05.07 rejected the appeal. It is against this order of the Commissioner (Appeals) that the present appeals have been filed.

3. Heard both the sides.

4. Shri R. Santhanam, ld. Counsel representing the appellants pleaded that this is not a case of clearing the goods more than once against the same invoice, that the goods had been cleared under Invoice No.222 dated 24.08.2004 to M/s. Bharat Ispat, Nadarganj, Lucknow on 24.08.2004 but immediately after leaving the factory the truck suffered a break down, as a result of which it could not move any further, that the truck got repaired only the next day; that no inquiry has been made by the officers with the consignee M/s. Bharat Ispat, Nadgarganj, Lucknow as to whether they have received the goods under the cover of invoice no.222 dated 24.08.2004, that the goods loaded in the truck and the truck are not liable for confiscation and that in view of this, the impugned order is not correct.

5. Shri I. Baig, ld. Departmental Representative, defended the impugned order and reiterating the Commissioner (Appeals)'s findings pleaded that the Driver in this statement recorded on the spot clearly stated that the goods covered under the invoice had been delivered to the consignee in Lucknow on 24.08.2004 and this is the second consignment loaded in the truck, that the statement of the Driver has not been retracted, that though it has been pleaded subsequently that the truck had

not left the industrial area in which the appellant-company is located on 24.08.2004 it had suffered break-down and it could be repaired only on the next day, no evidence in this regard at the time of interception of the truck had been produced, and that this plea was taken only after about one year and, therefore, the same has to be rejected as an afterthought. He also pointed out that the removal of the goods twice against the same invoice is also supported by the fact that on 25.08.2004 immediately after interception of the truck, when the stock taking was conducted in the factory of the appellant company, shortage of about 11.195 MT of CRF Sections was found which is comparable with the quantity of the CRF Sections found in the truck. In view of this, he pleaded that the impugned order is correct.

5. I have carefully considered the submissions from both the sides and perused the records. I find that the truck had been intercepted in the evening of 25.08.2004 in the Mandhana Industrial Area of Kanpur, the same area where the factory of the appellant-company is located. While the invoice was bearing the date as 24.08.2004 and time of clearance was mentioned as 19.35 hours, the truck along with 10.335 MT of CRF Sections was intercepted in the Mandhana Industrial area after about 24 hours after the clearance of the goods covered by the invoice no.222 dated 24.08.2004 in the same truck. At the time of interception, the Driver, on being asked by the officers told that the goods covered under

the invoice had been delivered to the consignee on 24.08.2004 and this is the second consignment being cleared. At that time, the Driver did not mention about the break down of the truck. Therefore, the plea of the appellant company that on 24.08.2004, the truck could not reach Lucknow and was stuck in the industrial area, close to the factory on account of break down has to be rejected as an after-thought, as no explanation has been given as to why the break down of the truck was not mentioned to the officers at the time of interception. I also find that while the weight of the goods covered under invoice no.222 dated 24.08.2004 was 9.210 M.T. , the actual weight of the goods was found to be 10.335 MT, which is comparable with the shortage of about 11.195 of CRF Sections found in the appellant factory, immediately after interception of the truck. I, therefore, hold that the goods seized along with the truck on 25.08.2004 had been cleared without payment of duty under the cover of an invoice, under which the goods had already been cleared on payment of duty on the previous day and this is a case of clearance of the goods more than once against the same invoice. In view of this, the goods along with the truck were liable for confiscation and the confiscation of the same has been rightly upheld by the Commissioner (Appeals). Since the goods have been cleared without payment of duty, the duty demand in respect of the same has also been rightly upheld. As regards, Shri Suresh Chand Verma, Authorised

Signatory of the Appellant Company since he was handling the production and clearance of the goods in the factory of the appellant company and was aware of the removal of the goods without payment of duty, he is also liable for penalty under Rule 26 of the Central Excise Rules and hence, penalty on him has also been rightly upheld. In view of the above discussion, I do not find any infirmity in the impugned order. The appeals are dismissed.

(pronounced in open court on....12/8/2016)

(Rakesh Kumar)
Member (Technical)

Ckp.