

GRAM : CEGCANAL

REGISTERED/A.D

THE CUSTOMS, EXCISE & GOLD (CONTROL) APPELLATE TRIBUNAL,

West Block No. 2, R.K. Puram, New Delhi - 110066.

BENCH NB(SM)

Appeal No. E/547/2000-NB(SM)

Dated : 8/1/2001

CEGAT
NEW DELHI
To,

CCE Delhi - I

In the matter of :

CCE Delhi - I

Appellant

vs.

M/s Universal Auto Products Ltd.

Respondent

I am directed to transmit herewith a certified copy of Final Order No. A/43/2001/NB(SM)
Dated : 25-12-2000 passed by the Tribunal under Section 35-C(1) of Central Excise
& Salt Act, 1944/Section 129 (B) of the Customs, Act, 1962.

Copy to : M/s Universal Auto Products Ltd,
1. 3A, Naraina Indl Area,
Phase-II, New Delhi

Asstt. Registrar
NB(SM)

2. CCE/CC/(Appeal) New Delhi
3. Chief Commissioner of Central Excise/Customs - New Delhi
4. Adv./Consult.

- NMC -

5. S.D.R
6. JCDR
7. Bar Association, CEGAT, New Delhi
8. Library, CEGAT, New Delhi
9. Director (Review), C.B.E.C. North Block, New Delhi
10. Guard File.
11. M/s Deeparchic Publications, M-93, Marg-46, Saket, New Delhi.
12. M/s Centax Publications (P) Ltd., 1512-E, Bhishm Pitamah Marg, opp. Sachdeva P.T. College of Defence Colony, New Delhi-110003
13. M/s Lex Site Com. Ltd., Mumbai
14. Office Copy
- 15- M/s Cen- cus Publications

Asstt. Registrar

**In the Custom, Excise & Gold (Control) Appellate Tribunal
New Delhi**

APPEAL NO. ^{E/547/2000-NB(SM)} OF 19 (.....)

ARISING OUT OF ORDER IN ORIGINAL/APPEAL NO.

1249-CE/DLH/99 DATED 9.12.99

PASSED BY Commissioner (Appeals), Central Excise

New Delhi

Date of decision 26.12.2000

CCE, Delhi

..... APPELLANT(S)

Represented by Sh./Smt. ~~XXXX~~ A.K. Jain, DR.....

VERSUS

M/s Universal Auto Products Ltd.

..... RESPONDENT(S)

Represented by Sh./Smt. None

CORAM:

..... SHRI V.K. AGRAWAL, MEMBER (JUDICIAL)

To be referred to the Reporter or not?

FINAL ORDER NO. A/43/01/NB(SM)

Per..... V.K. AGRAWAL :

In this appeal, filed by the Revenue, the issue involved is whether the goods lying in the factory premises are liable for confiscation under the provisions of Central Excise Act and Rules made

thereunder.

2. When the matter was called no one was present on behalf of the Respondents, M/s Universal Auto Products Ltd., inspite of notice. It is also observed that Respondents has not appeared in the past whenever the appeal was posted for hearing. I, therefore, take the appeal for disposal after hearing Sh. A.K. Jain, Ld. DR, and after perusing the records.

3. In this matter the Central Excise officers visited the factory premises of the Respondents on 24.12.96. The officers found 1,200 Silencer Bajaj Classic and 1,198 Silencer Bajaj Sunny totally valued at Rs.3,12,046/- in excess of the balance shown in statutory record i.e. RG-I Register. The officers also found that 15 Metric Ton of MS Scrap generated during the course of manufacture of finished goods valued at Rs.78,000/- was not recorded in RG-I Register. The Assistant Commissioner under Adjudication Order No.76/97-98 dated 31.7.97 confiscated the unaccounted goods with the option to the Respondents to redeem the same on payment of fine of Rs.15,000/-. The Commissioner (Appeals), however, under the impugned Order set aside the confiscation holding that seizure was not warranted as the goods were lying in the factory premises. The Commissioner (Appeal) relied upon the decisions in the case of Southern Steel Ltd. Vs. UOI 1979 ELT (T) 402 (AP): Pooja Forge Pvt. Ltd. Vs. CCE

1996 (84) ELT 37 and Western Transformer & Equipment Pvt. Ltd. Vs. CCE Jaipur 1995 (78) ELT 512 (T). From the perusal of the records it is observed that the Respondents had not disputed the fact that impugned goods found in excess were not entered in RG-I Register. The Assistant Commissioner rejected the plea advanced by the Respondents that the silencers were not in finished condition holding that Sh. Dinesh Kumar Singh, Authorised signatory of the Respondents, had at the time of search never mentioned that the goods were unfinished. As per provisions of Rule 53 of the Central Excise Rules, every manufacturer is required to enter in daily stock account the goods manufactured, removed etc. on daily basis unless allowed otherwise. No such plea appears to have been advanced before both the lower authorities, that any such permission had been given to the Respondents for not entering the production daily in RG-I Register. Rules 173Q and 226 of the Central Excise Rules provide for confiscation of the excisable good if a manufacture does not account for any excisable goods manufactured by him and if he fails to enter the required particulars in the Register. The Ld. DR has relied upon the decision in the case of Hindustan General Industries Ltd. Vs. CCE, New Delhi 1997 (96) ELT 382 wherein confiscation of the excisable goods for non accountal in RG-I Register was upheld. Reliance has also been placed by him on the decision in the case of Hawkins Cooker Ltd. Vs.

CCE Allahabad 1997 (92) ELT 255 in which the confiscation of excisable goods was upheld holding that non entry of goods in RG-I register cannot be treated as condonable lapse. The decision relied upon by the Ld. Commissioner (Appeals) are not applicable to the facts of the present matter as in the case of Southern Steel, supra, the issue involved for the consideration of the Hon'ble High Court was whether the goods were removed in contravention of any provisions of the Central Excise Rules. Clause (b) of Sub Rule (1) of Rule 173Q provides for confiscation of goods if a manufacturer "does not account for any excisable goods manufactured, produced or stored by him" was not in consideration in that case. Similar is the case of Pooja Forge. The contention of the appellants therein was that the goods were lying in the finishing room and they had not reached RG-I stage, As they were required to be weighed, sorted out and packed in gunny bags. In the present matter the Assistant Commissioner has specifically not accepted the plea of the Respondents that the goods were unfinished. Similarly in Western Transformer case, the transformers found within the factory premises were not fully manufactured and had not reached RG-I Stage. In view of this the goods in question are liable for confiscation. I, therefore, allow the appeal filed by the Revenue and restore the confiscation of the seized goods valued at

Rs.3,90,046.50/- with an option to the Respondents to redeem the said goods on payment of a fine of Rs.15,000/-. The appeal is thus allowed.

(V.K. AGRAWAL)
MEMBER (TECHNICAL)

Sunita