

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/ 3097-3098/99-NB (SM)

Dated : 23/1/2001

CEGAT  
NEW DELHI

To,

M/s Veekay General Industries &

Shri R.C. Prasad, B-46, Jhilmil

Tahirpur Indl. Area, G-T-Road

Sahadara, DELHI

In the matter of :

M/s Veekay General Inds. & Shri R.C. Prasad

Appellant

vs.

CCE Delhi - I

Respondent

I am directed to transmit herewith a certified copy of Final Order No. A/110-111/2001/NB (SM)  
Dated : 22-1-2001 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 :

Asstt. Registrar

1. CCE Delhi - I

NB (SM)

2. CCE/CG/(Appeal) New Delhi

3. Chief Commissioner of Central Excise / Customs. New Delhi

4. Adv. / Consult. Shri J.S. Agarwal, Adv.,  
S-187, Greater Kailash - II

5. S.D.R. New Delhi - 48.

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 Publication.

Asstt. Registrar

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

APPEAL NO. E/3097-3098/99-NB(S) OF 19 (.....)

ARISING OUT OF ORDER IN ORIGINAL/APPEAL NO.

23/99

DATED 30.11.99

PASSED BY the Commissioner of Central Excise, New Delhi.

Date of decision 22.1.2001

(1) M/s. VeeKay General Industries APPELLANT (S)  
(2) Shri R.C. Prasad

Represented by Sh./Smt. J.S. Agarwal, Advocate

**VERSUS**

CCE Delhi

RESPONDENT (S)

Represented by Sh./Smt. ....

CORAM: Shri P.S. Bajaj, Member Judicial

To be referred to the Reporter or not ?

FINAL

ORDER NO. 11107-11/07/NB(Ce/m)

Dated: 22.1.2001

Per. P.S. BAJAJ

These two appeals have been filed against the common order in original dated 30.11.99 passed by the Commissioner of Central Excise, by the appellants vide which he ordered seizure of goods involving duty of 2,27,286/- with option to get the same redeem on payment of Rs.4,00,000/- ; and imposed penalty of Rs.1,00,000/- under Rule 173-Q of the Central Excise Rules, on appellant No. (1) and also imposed penalty of Rs.25,000/- on appellant

No.(2) under Rule 209A of the Rules.

2. The facts giving rise to this appeal may briefly be stated as under:

3. The appellants were engaged in the manufacture of copper wire bars/ingots, strips copper wire of refined copper.etc.They had been availing modvat facility under Rule 57-A of the Rules. On 8.12.96 surprise raid was conducted on their factory premises by the Central Excise Officers(Preventive) and Shri R.C. Prasad (appellant No.2), authorised signatory of the firm of appellant No.(1) was present at that time in the factory. After scrutiny of the record and physical stock checking of the finished goods as well as the raw materials lying in the factory premises, 108 coils of copper strips weighing 12.420 MT valued at Rs.15,15,240/- were found in excess of the recorded balance in the RG.1 Register. Shri R.C. Prasad, appellant No.(2) could not offer any reasonable explanation for this excess quantity of the strips. Similarly, 120 MT of copper cathodes were found in excess of the recorded balance in Form IV Register. The excess quantity of these goods, was seized on the reasonable belief that the same were kept unaccounted for clandestine removal without payment of duty and were handed over to Shri M.M.Mittal, partner of the appellant No.(1). Thereafter, show cause notice was issued for

confiscation of the goods found in excess of the recorded balance in the record and penalty was also proposed to be imposed. The appellants contested the correctness of that show cause notice and alleged that 108 coils of strips were in semi-finished condition and did not reach the RG.1 stage and as such could not be entered in the record. Regarding the excess recovery of copper cathodes, they avered that there was entry in the Form IV Register and they imported 120 MT of copper cathodes vide Bill of Entry dated 29.11.96 and were cleared from ICD Tughlakabad. They further avered that out of the total quantity of 201.596 MT as per Bill of Entry, a quantity of 81.59 MT was sent directly to ICD Tughlakabad, to M/s. Hyvolt Electricals for getting the job work under Rule 57-F(3) of the Rules. No credit was taken by them in respect of these goods even if these were assumed to be not accompanied by duty paying documents.

4. The Commissioner, however, did not accept this version of the appellants and ordered confiscation of the goods involving excise duty of Rs.2,27,286/- with option to get them redeemed on payment of Rs.4,00,000/- and imposed penalty of Rs.1,00,000/- under Rule 173-Q of the Rules on the appellants. He also imposed penalty of Rs.25,000/- on appellant No.(2) Shri R.C. Prasad, under Rule 209-A of the Rules, being authorised

signatory of appellant No.(1). The Commissioner, however, vacated the seizure of 120 MT of copper cathodes through the impugned order.

5. Both the appellants have filed the present appeals.

6. I have heard both the sides and gone through the record.

7. The learned counsel for the appellants has assailed the impugned order of the Commissioner on two grounds. Firstly, that the show cause notice on the strength of which the proceedings were initiated against the appellants and the impugned order had been passed by the Commissioner, was time barred having been issued after the expiry of six months from the date of seizure of the goods. Secondly, that the Commissioner had proceeded on the wrong assumption that the goods seized through panchnama by the Excise Officer(Preventive) on the date of raid were finished goods ready for marketing, whereas in the panchnama itself which was prepared at the spot, the goods were described as unfinished. Even in the show cause notice the goods were wrongly mentioned as finished goods. The goods being unfinished did not attain the RG.1 stage and, <sup>also</sup> could not be removed by the appellants for sale or marketing purposes. Therefore, the impugned order of the Commissioner deserves to be set aside on both these grounds.

6. On the other hand, the learned JDR has not been able to meet with both these grounds of the counsel during the course of arguments. He could not deny that the show cause notice was issued after the period of six months from the date of seized of goods and there was no allegations of fraud, collusion or wilful misstatement or suppression of facts in the show cause notices.

7. The perusal of the record shows that the raid on the factory premises of the appellants was conducted by the Central Excise Officers on 8.12.96. On checking 108 coils of strips were found in excess of the recorded balance in the RG.1 Registry and 120 MT of copper cathodes were found in excess of the recorded balance in the form IV Register. Both these goods were seized through panchnama prepared at the spot. So far as the seizure of 120 MT of copper cathodes is concerned that is not the matter of dispute in the present appeals as those were released and the seizure was vacated by the Commissioner himself who adjudicated the matter.

8. The only dispute involved in the present appeals is regarding the validity of the order of the Commissioner, for confiscation of the seized 108 MT coils of strips which were allegedly found in excess of the recorded balance in the RG.1 Register. In the show cause notice these copper strips had been described as finished goods

and the Commissioner who adjudicated this show cause notice, also accepted these allegations made in the show cause notice to be correct and proceeded on the assumption that these goods were in finished condition and were not entered in the RG.1 Register with an intent to clandestinely remove the same without payment of duty, But by referring to the panchnama through which these goods were seized, it can be safely said without any hesitation that the allegations contained in the show cause notice were factually incorrect and this further resulted in passing the wrong order by the adjudicating authority, the Commissioner. In the panchnama, the seized goods i.e. 108 coils of copper strips, had been clearly described as semi-finished, which was found in excess of the recorded balance in the RG.1 Register. Even R.C. Prasad appellant NO.(2) who was present at the time of checking of the factory<sup>and</sup>, whose statement was recorded on the spot, no where admitted that the coils of copper strips found in excess were finished goods. Rather, perusal of his statement copy of which had been placed on record by the appellants along with the appeals, shows that the copper strips seized were in semi-finished condition.

9. When the goods were in semi-finished condition, these were not required to be entered in RG.1. The entry was required to be made only when the goods had reached the RG.1 stage i.e. when the goods had acquired the finished condition and could be marketed. In this context, reference may

be made to Emco Industrial & Chemicals Ltd. - Vs. CCE, Pune 1987(32) ELT 220 wherein it has observed that, "when the goods could not be treated as fully manufactured in a marketable condition, their entry in RG.1 Register was not required and as such no case was made out against the assessee for confiscation of the goods and imposition of penalty under Rule 173-Q of the Rules." The case of the <sup>present</sup> appellants falls within the four corners of the ratio of the law laid down in that case. The adjudicating authority, the Commissioner, in fact mis-interpreted the facts and proceeded on the wrong assumption that the coils of copper strips seized from the factory premises of the appellants, for having been found in excess of the recorded balance in RG.1 Register, were finished goods which could be marketed and clandestinely removed by them without payment of duty. He should have referred to the panchnama through which these goods were seized wherein the nature of the goods at the time of seizure, was described as semi-finished and not finished goods.. Therefore, the provisions of Rule 173-Q could not be legally invoked against the appellants on account of their failure to record the semi-finished goods lying in their factory premises in the RG.1 Register. The entry in that Registry was legally required to be made by them only when these goods had acquired the level of finished goods and could be marketed at any time.

10.

Apart from this, even otherwise for

mere non-accountal of goods in RG.1 Register by the appellants, the provisions of Rule 173-Q could not be invoked for want of any evidence to show that there was any intention on their part to remove the goods without payment of duty. In this context reference may be made to Bhiali Conductors (P) Ltd. vs. CCE-Raipur, 2000(125) ELT 781 wherein the Tribunal has taken the view that", "confiscation of the goods was not attracted by mere non-accountal in RG.1 when there was no evidence that such non-accountal of the goods was with an intent to evade payment of duty. Rule 173-Q being a penal clause intention is in-built in it and therefore, mens rea is an essential ingredient to attract this rule. This rule has to be read in conjunction and not in isolation with other provisions".

11. Besides all this, it remains undisputed that the show cause notice was issued much after the expiry of six months from the date of seizure of the goods. The seizure was made on 8.12.96 whereas the show cause notice was issued only on 5.8.97 after the expiry of six months without any allegations of fraud, collusion or wilful misstatement or suppression of facts. There is nothing on the record to suggest that the appellants ever made any misstatement regarding stock of the raw material and the finished goods lying in their factory premises. There were no allegations even to that effect in the show cause

notice. No fraud or collusion had also been attributed to them which they at any stage played or exercised with the Excise Department. Therefore, the proceedings on strength of show cause notice in question, which was time barred, could not be legally taken out against the appellants. The adjudicating authority (Commissioner) should have dropped the proceedings on that ground alone. Consequently, the impugned order passed by him on the strength of time barred show cause notice cannot be legally sustained.

12. In view of the discussion made above, the impugned order of the Commissioner is set aside and both the appeals of the appellants are ordered to be accepted with consequential relief, if any, permissible under the law.

(P.S. BAJAJ)  
MEMBER TECHNICAL

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