

GRAM : CEGCANAL

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

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

E/CO/104-105/2000-NB(SM) BENCH NB (SM)
Appeal No. E/848/2000-NB(SM)

Dated : 30/1/2001

CEGAT
NEW DELHI
To,

CCE Chandigarh - I

In the matter of :

CCE Chandigarh - I

Appellant

vs.

M/s Hemkunt Iron & Steel (P) Ltd.

Respondent

I am directed to transmit herewith a certified copy of Final Order No. A/136/2001-NB(SM)
Dated : 25-1-2001 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 : M/s Hemkunt Iron & Steel (P) Ltd.,
1. Barotiawala, Distt. Solan,
Himachal Pradesh

PL
Asstt. Registrar
NB(SM)

2. CCE / CC / (Appeal) Chandigarh - I
3. Chief Commissioner of Central Excise / Customs, New Delhi
4. Adv. / Consult. Shri Gagan Kohli, Adv.,
40 Respondent.
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, Bhisim 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.

PL
Asstt. Registrar

CUSTOMS, EXCISE AND GOLD (CONTROL) APPELLATE TRIBUNAL
NEW DELHI:

No.E/CO/104-105/2000-NB(S) in A.No.E/848/2000-NB (SM)

(Arising out of Order-in-Appeal No. 2257/CE/CHD/99 dt. 23.12.99 passed by the Commissioner (Appeals) Central Excise, Chandigarh)

C.C.E. Chandigarh-I .. Appellants
(Rep. by Shri M.D Singh, SDR)

vs.

M/s. Hemkunt Iron & Steel (P) Ltd. .. Respondents
(Rep. by Shri Gagan Kohli, Advocate)

DOH: 11.10.2000

FINAL Order No. A/134/01/NB(S) dt: 25.1.2001

Per K.K. Bhatia, Member (T):

The facts in this case are that the appellants M/s. Hemkunt Iron & Steel (P) Ltd. manufactured other Alloy Steel Ingots falling under Heading 7224.00 of the schedule to the Central Excise Tariff Act, 1985. Their premises were visited by the Central Excise Officers on 11.11.95 and it was found that they were receiving Steel scrap from M/s. Ginvic Steel (P) Ltd. under the cover of challans under Rule 57F(3) of the Central Excise Rules, 1944 and manufacturing ingots from such scrap. These ingots were sent back under the cover of the same challans without payment of duty. They charged only job charges from M/s. Ginvic Steel (P) Ltd. On verification of their stocks, it was found that 42 pieces of ingots weighing 6.827 M.Ts valued at RS.1,63,848/- were lying unaccounted without their being reflected in the RG.1 Register of the party. The RG.1 Register itself was written only upto 30.10.95. It was further observed that M/s. Hemkunt Iron & Steel (P) Ltd. had received 85.565 M.Ts of scrap valued at Rs.7,23,346/- since the start of the factory from 24.8.95 from M/s. Ginvic Steel (P) Ltd.

under the cover of the challans issued under Rule 57F(3) and had returned 67.214 M.Ts of ingots valued at Rs.15,38,572/- to M/s. Ginvic Steel (P) Ltd. Consequently, the aforesaid 42 pieces of ingots were seized and the party was issued a Show Cause Notice dt. 1.2.96 calling upon them to show cause why 42 pieces of ingots weighing 6.827 M.Ts should not be confiscated under Rule 173Q and why the duty amounting to Rs.2,30,786/- should not be recovered from them in respect of 67.214 M.Ts of ingots cleared by them without payment of duty manufactured from the steel scrap received from M/s. Ginvic Steel (P) Ltd. on job work basis. They were also asked to show cause why penalty should not be imposed on them under Rules 9(2), 173Q and 226. In the same Notice, M/s. Ginvic Steel (P) Ltd. were called upon to show cause why Central Excise duty amounting to Rs. 1,08,502/- should not be recovered from them which they had not paid on the steel scrap cleared by them without payment of duty and why penalty should not be imposed on them. On receiving the replies from the respective noticee parties and on hearing them, the Dy. Commissioner of Central Excise, Chandigarh vide his Order dt. 10.9.96 dropped the proceedings initiated against the two parties. The Dy. Commissioner in his order observed that M/s. Hemkunt Iron & Steel (P) Ltd. had manufactured the seized ingots from the raw material received by them from M/s. Ginvic Steel (P) Ltd. under Rule 57F(3) challans. It is stated that the raw material had been supplied by M/s. Ginvic Steel (P) Ltd. under Rule 57F(3) after obtaining the permission from their jurisdictional Asst. Commissioner and they also maintained proper record of the same under Annexure-IV

Register. He further observed that M/s. Hemkunt Iron & Steel (P) Ltd. had contended that the 42 ingots were the production of the unit from 10.11.95 to 11.11.95 and this very fact had been mentioned in the statement dt. 11.11.95 recorded from Shri Roop Lal Mehta, authorised signatory of the party. Therefore, he observed that there was no justification to confiscate the same under Rule 173Q. As regards the recovery of duty on 67.214 M.Ts ingots already cleared, he observed that the same were manufactured on job work basis and cleared to M/s. Ginvic Steel (P) Ltd. under challans without payment of duty under Notfn. No.214/86-CE as amended. He observed since the party had followed the procedure under Rule 57F(3) read with Notfn. No.214/86-CE, there was no duty recoverable from them on the said goods under Rule 9(2). He adopted the same arguments for dropping the demand of duty of Rs.1,08,502/- made on M/s. Ginvic Steel (P) Ltd.

2. Not satisfied with the above order passed by the Dy. Commissioner of Central Excise, Chandigarh, the Department filed an appeal before Commissioner (Appeals), Chandigarh. The Commissioner (Appeals) in his order dt. 23.12.99 observed that since the removal of inputs as well as intermediate products for specified purpose under Rule 57F(3) and Notfn. No.214/86-CE (N.T) dt. 25.3.86 were permitted without payment of duty, the clandestine removal without payment of duty is of no consequence. He relied on the decision of Madras High Court in the case of M/s. DCW Ltd. vs. Asst. Commissioner reported in 1996 (88) ELT 31 (Mad) wherein it has been held that penalty is not leviable for a mere procedural lapse in the absence of intention to evade duty. In the instant case

goods are exempted from payment of duty by virtue of provisions of Rule 37F(3) and Notfn. No.214/86-CE(N.T) dt. 25.3.86. With this observation, he upheld the order passed by the lower authority and dismissed the appeal of the Department.

3. The present appeal is against the above order of Commissioner (Appeals). I have heard Shri M.D. Singh, SDR for the appellants and Shri Gagan Kohli, Advocate for the Respondent. It is contended on behalf of the Revenue that since the start of the factory of M/s. Hemkunt Iron & Steel (P) Ltd. from 24.8.95, they received 85.565 M.Ts steel scrap valued at Rs.7,23,346/- from M/s. Ginvic Steel (P) Ltd. under the cover of challans issued under Rule 57F(3) and had returned to them 67.214 M.Ts ingots valued at Rs.15,38,572/- without payment of duty whereas both of these items were required to be cleared on payment of appropriate duty. It is contended that steel ingots could not be got manufactured on job work basis under Rule 57F(3) by supplying raw material (i.e., steel scrap) because in such case, entirely distinct dutiable product commercially known as steel ingots classifiable under sub-heading 7224.00 emerges. Steel ingots manufactured cannot be treated as intermediate product for the manufacture of Alloy Steel forgings falling under sub-heading 7228.40 because the two are distinctly classifiable under different sub-headings. Therefore, it is contended that the clearance of steel scrap by the party No.2 to Party No.1 without payment of proper duty and clearance of steel ingots by the Party No.1 to the party No.2 without payment of proper duty is in violation of the provisions of Central Excise law. The ld. Counsel for the Respondents, on the other hand submitted that the steel scrap was not subjected to any duty and the

Respondents had taken no modvat credit on them. Therefore, the clearance of such scrap under Rule 57F(3) by no stretch of imaginations could be subjected to any duty. I have considered these submissions. I find no force in the contention of the Revenue. Admittedly in terms of provisions of Rule 57F(3), the raw material could be sent to the job worker and the products so manufactured by the job worker could be returned to the raw material supplier without payment of duty in terms of the provisions of this Rule read with Notfn. No.214/86-CE(N.T) dt. 25.3.86. As already observed in the Order-in-Original passed by the Dy. Commissioner of Central Excise, M/s. Ginvic Steel (P) Ltd. — the raw material supplier had taken due permission from the Central Excise authorities to send the steel scrap to its job worker without payment of duty and to receive back steel ingots manufactured by the job worker and to use the same for further manufacture of the steel forgings. In this view of the matter, there is no violation of rules committed by either of the two noticee parties. The appeal of the Revenue is therefore, without any basis and same is accordingly dismissed upholding the orders passed by the lower authorities.

(K.K. Bhatia)
Member (Technical)

MS.
23.01.01