

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/1628/00/NB(SM)

Dated : 14/2/2021

CEGAT
NEW DELHI
To,

M/s Hyvolt Electricals
B-36, Jhilmil Indl. Area,
Delhi-110095

In the matter of :

M/s. Hyvolt Electricals

Appellant

vs.

CCE New Delhi

Respondent

I am directed to transmit herewith a certified copy of Final Order No. A/273/01/NB(SM)
Dated : 14/2/2021 passed by the Tribunal under Section 35-C(1) of Central Excise
& Salt Act, 1944/Section 129 (B) of the Customs, Act, 1962.

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Asstt. Registrar
NB(SM)

1. CCE New Delhi
2. CCE / CE-1 (Appeal) New Delhi
3. Chief Commissioner of Central Excise / Customs. New Delhi
4. Adv. / Consult. Sr. JS Agawal, Adv
S-187, Greater Kailash-II
New Delhi-48
5. S.D.R-NB(SM) 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, Bhisim Pitamah Marg, opp. Sachdeva P.T. College of
Defence Colony, New Delhi-110003
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Asstt. Registrar NB(SM)

CUSTOMS, EXCISE & GOLD (CONTROL) APPELLATE TRIBUNAL
NEW DELHI

Appeal No. E/1628/00-NB(SM)

(Arising out of Order-in-Original No. 9/2000 issued under C.No. V(7407)15/CE/3/2000/1244 dt. 27.4.2000 passed by the Commissioner of Central Excise (Delhi-I), New Delhi)

M/s. Hyvolt Electricals
(Rep. by Shri J.S. Agarwal, Advocate)

.. Appellants

vs.

C.C.E. New Delhi
(Rep. by Shri M.D. Singh, SDR)

.. Respondents

DOH: 20.11.2000

Final Order No. A/273/01/NB (CS/M) dt: 14.2.2001

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

The facts in this case are that the appellants manufacture Copper wire bars/ingots, copper wire of refined copper and enamelled insulated winding wire of copper falling under Chapter Tariff Heading No.7407, 7408 and 8544 respectively. They were availing modvat credit on the inputs under Rule 57A. On 8.12.96, their unit premises were visited by the Central Excise party. On physical stock taking, 87962.220 kgs. of copper cathode (raw material) valued at Rs.83,56,411.00 involving Central Excise duty of Rs.12,53,462.00 were found in excess of the recorded balances in their Form IV/57-F(3) Register. Also 4521.050 kgs. and 3272.150 kgs. of copper wire finer than 6 mm was found short of the recorded balance in these Registers. Shri Yogesh Mittal, Partner of the appellants in his statement of even date deposed that the raw material found in excess was received in their factory on

7.12.96 from ICD, Tughlaqabad on behalf of M/s. Veekay General Industries, Delhi without cover of challans/Bill of Entry etc. He stated that these goods belonged to M/s. Veekay General Industries. The shortage of the above said other raw material was also admitted by Shri Yogesh Mittal and he voluntarily debited an amount of Rs.1,13,000/- in their RG.23A Pt.II account and a sum of Rs.22,000/- in their PLA on the spot. The excess found goods were however put under seizure.

2. The appellants were issued a show cause notice dt. 5.6.97 by the Commissioner of Central Excise, Delhi-I, in which they were called upon to show cause why the seized goods should not be confiscated under Rule 173Q of Central Excise Rules, 1944 and why the Central Excise duty amounting to Rs. 1,46,123.00 should not be demanded from them in respect of shortage of 7793.200 kgs. of copper wire finer than 6 mm and why penalty should not be imposed on them under Rule 173Q. Shri Yogesh Mittal, Partner of the appellants was called upon to show cause why penalty should not be imposed on him under Rule 209A.

3. The above proceedings culminated in Commissioner, Central Excise passing an Order dt. 27.4.2000, in which he confirmed the demand of Rs.1,46,123.00 on the appellants. Since an amount of Rs.1,35,000.00 had already been paid by the party, he ordered for appropriation of the same against the confirmation of the demand on them. He asked the party to pay the interest on the balance amount of Rs.11,123.00 under Section 11A. He further imposed a penalty of Rs.1,50,000.00 under Rule 173Q on them. He, in his order however, vacated the seizure of 81,374 kgs. of copper cathode and also observed that no penalty was liable to be imposed on Shri Yogesh Mittal.

4. The present appeal of the party is against the above order of Commissioner of Central Excise, Delhi-I. I have heard Shri J.S. Agarwal, Advocate for the appellants and M.D. Singh, SDR for the Respondents. The ld. Advocate for the appellants at the outset submitted that he is not contesting the demand of Rs.1,46,123.00 on the appellants. Out of this demand, a sum of Rs.1,35,000.00 has already been paid by them. He however, contended that no penalty is liable to be imposed on the appellants in the facts and circumstances of the case under Rule 173Q. He stated that the penalty, if any, is liable to be imposed only under Rule 226, the provisions of which warrant for imposition of maximum penalty of Rs.2,000.00 only. I find no merit in these submissions. As already stated, the facts of the case and the confirmation of the duty demand on the appellants are not contested before me. Consequently, the penal provisions under Rule 173Q will automatically follow. The appellants, as is evident from the facts narrated in the Order-in-Original, at no stage had contested before the original authority that the penal provisions under Rule 173Q invoked against them are either not relevant or are not applicable in their case. Even in their written Memorandum of appeal or during the course of hearing also it has not been explained as to how only the provisions of Rule 226 are relevant or applicable in their case. Consequently, I find no force in these submissions. However, the imposition of a penalty amounting to Rs.1,50,000/- for a duty amount of Rs.1,46,123/- is

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excessive and same is reduced to Rs.1,00,000/- (Rupees one lakh only).

b. But for the above modification, the appeal otherwise is without any merit and the same accordingly is rejected upholding the order passed by the lower authority.

(K.K. Bhatia)
Member (Technical)

MS.
13.2.01