

GRAM : CEGCANAL

REGISTERED/A.D

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

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

Appeal No. E/2121/2000-NB SM' BENCH NB SM'

Dated: 21/3/2001,

CEGAT  
NEW DELHI

To,

M/s Indore Steel & Iron Mills Ltd.  
314, Bhagirathpura.  
Indore.

In the matter of:

M/s INDORE STEEL AND IRON MILLS LTD. Appellant  
vs.  
CCE Indore. Respondent

I am directed to transmit herewith a certified copy of Final Order No. A/394/2001-NB SM'  
Dated: 23/1/2001 passed by the Tribunal under Section 35-C(1) of Central Excise  
& Salt Act, 1944/Section 129 (B) of the Customs, Act, 1962.

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ALL  
Asstt. Registrar  
NB SM'

1. CCE. Indore.
2. CCE/EE/ (Appeal) Bhopal.
3. Chief Commissioner of Central Excise / Customs. Indore.
4. Adv. / Consult. Shri K. K. Anand Adv.  
A- 5. Basement Lajpat Nagar III  
New Delhi - 24.
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~~
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M  
Asstt. Registrar

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

E/2121/2000/NB (SM)  
APPEAL NO.....OF 19 (.....)

2000 [169-CE/ IND/APRL/98/90] ARISING OUT OF ORDER IN ORIGINAL APPEAL NO. 14-CE/BPL

.....DATED 6-1-2000

PASSED BY COMMISSIONER.....(APPEALS).....

CENTRAL EXCISE, BHOPAL

23-1-2001

Date of decision.....

INDORE STEEL AND IRON MILLS LTD.....APPELLANT (S)

Represented by Sh./Smt. K.K.ANAND,

ADVOCATE

VERSUS

.....CCE INDORE.....RESPONDENT (S)

Represented by Sh./Smt. S.C.PUSHKARNA, JDR

CORAM:  
SHRI V.K.AGRAWAL, MEMBER (TECHNICAL)

To be referred to the Reporter or not?

FINAL ORDER NO. A/394/01/NB  
CCPM

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

M/s Indore Steel & Iron Mills Ltd,  
have filed the present appeal being aggrieved  
with the Order No. 14/2000 dt. 6-1-2000  
passed by the Commissioner (Appeals)  
upholding the demand of duty amounting to Rs.  
64,763/- and a equal amount of penalty under.

Section 11 AC of the Central Excise Act and a penalty of Rs. 30,000/- under Rule 173Q(1)(b) of the Central Excise Rules, confiscation of goods with an option to redeem the same on payment of fine of Rs. 50,000/- and confiscation of two trucks with option to redeem the same on payment of fine of Rs. 60,000/-.

2. Shri K. K. Anand, Ld. Advocate, submitted that when the Central Excise Officers, visited their unit on 3-11-97 they found that though the excisable goods had been cleared under invoices and that truck was also parked therein in which excisable goods had been loaded, no excise duty was debited either in the PLA or in RG 23A Part II/RG 23C Part II; that there was sufficient credit balance in their RG-23A Part II Register but the entries could not be made on account of clerk concerned ~~having~~ suddenly becoming ~~seriously~~ sick due to stomach infection; that as the Truck Drivers were in a hurry and making lot of noise, the excise clerk handed over the invoices to them thinking that he would make the necessary debit entry after he returned to his seat; that this was only a clerical mistake and there was no intention to evade duty which is evident from the fact that the invoices

had been issued; that further, the truck had reached the destination,† that is in the factory of M/s Indore Wire Co. Ltd.; that Central Board of Excise and Customs in letter No. 207/37-M/77/Cx-6 dt. 21-9-78 has mentioned that seizure is not warranted in the case of removal of goods which have been duly entered in production records and removed under cover of appropriate gate pass, without making debit entry in PLA provided there is adequate balance in PLA; that it is not a case of suppression of production or removal with intent to evade payment of duty and accordingly seizure of goods and vehicle is totally illegal under the law; that in any case it is not a case for imposition of mandatory penalty under Section 11AC of the Act as the excise duty had not been paid by reason of fraud, collusion etc.

3. Shri S.C.Pushkarna, ld. DR, on the other hand, submitted that it has not been disputed by the Appellants that the excisable goods were removed from the factory premises without payment of duty which is contrary to the various provisions of law; that the Central Excise goods can be removed from the factory only after discharging duty

liability; that, therefore, penalty is imposable on the appellants as well as both goods and trucks are also liable for confiscation.

4. I have considered the submissions of both the sides. The Appellants have not contested the demand of duty as confirmed by the impugned order. I, therefore, uphold the demand of duty made from the Appellants. As rightly pointed out by the ld. DR, excisable goods have been removed from the factory premisses without payment of duty. <sup>It</sup> ~~is~~ is the requirement under Rule 173F that no excisable goods shall be removed unless duty has been paid thereon. As in this case the goods admittedly had been removed without debiting the duty, penalty under Rule 173Q(1) (b) is liable to be ~~the~~ imposed on the Appellants and the offending goods as well as trucks are liable for confiscation. Further considering the plea raised by the Appellants from the very beginning which is evident from the statement of Shri Ashutosh Virmani, General Manger of the Appellants, a lienent is called while imposing penalty and determining the ~~the~~ redemption fine. I, therefore, reduce the penalty ~~under~~ to Rs 15,000 under Rule 173Q; redemption fine on goods to Rs. 25,000/- and redemption fine in respect of Trucks to Rs. 20,000/- I agree with the ld.

Advocate, that no penalty under Section 11 AC is warranted in the present matter as none of factors specified in the Section is present. The appeal is thus allowed partly.

(V.K.AGRAWAL)

MEMBER (TECHNICAL)

Sunita  
19-3-2001