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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
CUSTOMS APPEAL BRANCH

Appeal No. C/167 /2007-168 /2007 - CU[DB] Date **21/07/2011**

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
1. SANJAY GUPTA DIRECTOR
2. M/S COMPEX METAL AND CHEMICALS P. LTD.

40TH K.M. STONE, G.T. KARNAL ROAD,
BAHALGARH, DISTT SONEPATH

M/S COMPEX METAL AND CHEMICALS P. LTD. Appellant

Vs

C.C.E. ROHTAK Respondent

I am directed to transmit herewith a certified copy of **Final order No. C/327-328/ 2011 CU[DB]** dated 14.07.2011 passed by the Tribunal under **Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax**

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
C.C.E. ROHTAK
17-P, SECTOR 1, ROHTAK

2. Adv. / Consult
MR.PIYUSH KUMAR,ADV
B-25,LAJPAT NAGAR-III,N.DELHI-24.

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New Delhi
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

Assistant Registrar
(Customs Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

(Principal Bench)

R.K. Puram, West Block -2, New Delhi – 110 066

CUSTOMS APPEAL BRANCH

Appeal No. : C/167-168 of 2007

Arising out of : OIA No. 345-346/NOS/RTK/2006 dated 29.11.2006

Passed by : Commissioner of Customs & Central Excise, Delhi-II

For approval and signature :

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Mathew John, Member (Technical)

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2	Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
3	Whether their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

Appellant (s) : M/s. Compex Metal & Chemicals Pvt. Limited

Represented by : Ms. Reena Rawat, Advocate

Respondent (s) : Commissioner of Central Excise, Rohtak

Represented by : Shri K.K. Jaiswal, SDR

CORAM :

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Mathew John, Member (Technical)

Date of Hearing : 02.06.2011

~~Date of Decision : 2 .06.2011~~
Date of Pronouncement : 14-7-11

Final ORDER No.C/327-328/11.

Per : Mrs. Archana Wadhwa;

Both the appeals are being disposed of by a common order as they arise out of the same impugned order passed by Commissioner (Appeals).

2. As per facts on record, M/s. Compex Metal & Chemicals Pvt. Limited is 100% EOU. Their factory was visited by the officers and verification of the raw materials was under taken. It was found that the appellants had imported scrap at concessional rate of duty, in terms of Notification No. 21/2002-Cus dated 01.03.2002. The scrap imported by the appellant was found to be short to the extent of 16.649 MT. It was also found that appellants were allowed clearances in DTA to the extent of 305MT, whereas they have indulged in DTA clearances up to 314.620 MT. As such, a view was taken that the excess clearance of 9.620MT was in violation of terms and condition of the Notification No. 21/2002.

3. Based on the above, proceedings were initiated against the appellants for confirmation of demand of duty in respect of short found scrap as also in respect of the clearances made in excess than the permitted clearances. The said notice culminated into an order passed by original adjudicating authority confirming demand and imposing penalties. The said order of the original adjudicating authority was confirmed by Commissioner (Appeals).

4. The adjudicating authority has observed that the first issue relates to confirmation of demand of duty of Rs. 2,40,723/- in respect of the shortages of 16.649 MT of scrap imported by the appellants under bill of entry dated 11.12.2003, on payment of concessional rate of duty, in terms

of Notification No. 21/2002-Cus dated 01.3.2002. The appellants have taken a stand that the said shortages was on account of presence of concrete, plastic and glass in the consignment of the imported scrap, which stands segregated by them. The said plea of the appellants does not stand accepted by the Commissioner (Appeals) on the ground that out of the total quantity imported by the appellants i.e. 27.300MT, 16.649MT has been shown as contamination, which is quite unrealistic. He has also observed that the appellants have failed to prove their contention on the basis of documents, such as correspondence with the suppliers, claim of insurance etc.

5. The appellants in their memo of appeal have submitted that the matter was taken up with the suppliers, who have agreed to pay them the compensation. However, we find that apart from above bald statement, there is no documentary evidence on record indicating making of such claim on the supplier. Further, no papers have been placed on record showing acceptance of contamination in the scrap by the foreign supplier and the consequent compensation to the importer. The fact of shortage of scrap has not been denied by the appellant. As such, we find no reason for interfering in the impugned order confirming demand of duty to the extent of Rs. 2,40,723/-.

6. Further, duty stands confirmed in respect of imported scrap sold to M/s. M.R. Enterprises. The Commissioner has observed that the said fact has been admitted by the appellant and has not been contested by them. He has, however, given relief to the appellants by considering their plea as against confirmation of differential duty of Rs. 1,49,738/-, the correct calculation of demand should be Rs. 54,194/-. He has accordingly,

reduced the penalty also to the above extent. Inasmuch as the said issue has not been contested by the appellants, we are not interfering in the said finding of the Commissioner (Appeals).

7. The third issue relates to demand of differential duty on excess ~~sell~~ sale of scrap in DTA. The appellants have not contested the fact of excess ~~sell~~ sale than the permitted DTA clearances but have submitted that, inasmuch as the DTA clearances were on payment of duty, the present demand of duty will amount to double taxation. The said plea of the appellant stands dealt with by the Commissioner (Appeals) by observing that the duty now being demanded from the appellant is on account of difference in the actual rate of duty and concessional rate of duty, under Notification No. 21/2002-Cus dated 01.3.2002, at the time of import of the scrap. We find no infirmity in the above reasoning of Commissioner (Appeals). Admittedly, the duty now being demanded from the appellants is in respect of the differential duty at the time of import. The appellant having availed the benefit of concessional rate of duty, being a 100% EOU, any unauthorized sales from the said 100%EOU would result in confirmation of demand of differential duty, availed by them at the time of import of the goods.

8. In view of the above, we find no reason to interfere in the impugned order of Commissioner (Appeals). Both the appeals are accordingly, rejected.

(Pronounced in the Court on 14-07-11)

(Mathew John)
Member (Technical)

(Archana Wadhwa)
Member (Judicial)

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