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

Appeal No. E/884 /2006-885 /2006 - EX[DB] & E/M/489/2011-EX   Date **12/10/2011**

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

To :
M/S A.K. ALLOYS PVT. LTD.
VILL. GAUNSPURA, LUDHIANA ROAD,
MALERKOTIA (PB)

M/S A.K. ALLOYS PVT. LTD. Appellant
Vs
C.E.E. LUDHIANA **MISC ORDER NO. 508/2011-EX** Respondent

I am directed to transmit herewith a certified copy of **Final order No.872-873 2011 EX|DB|** dated 07-10-11 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
C.C.E. LUDHIANA
CENTRAL EXCISE HOUSE, 'F'
BLOCK, RISHI NAGAR,
LUDHIANA 141001 (PUNJAB)

2. Adv. / Consult
MR.SUDHIR MALHOTRA
13-R, HUKAM CHAND COLONY, NEAR D.A.V COLLEGE, JALANDHAR

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
14. SH. KULBUSHAN,
M/S A.K. ALLOYS PVT. LTD.
VILLSGE GAUNSPURA, LUDHIANA ROAD,
MALERKOTIA (PB)

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
Court No.II

E/Misc No.489/2011 in E/Appeal No.884-885/2006

Date of Hearing: 6.9.2011

M/s A.K. Alloys — Appellant

Vs

CCE, Ludhiana — Respondent

Appeared for the Appellant: Shri Sudhir Malhotra, Advocate
Appeared for the Respondent: Shri K.P. Singh, DR

Coram: **Hon'ble Mr D.N. Panda, Member Judicial**
Hon'ble Mr. Mathew John, Member Technical

MISC ORDER No. 508/2011-EX

Per D.N. Panda:

Revenue's application for early hearing has become infructuous since the matter is taken up for hearing. Accordingly, MA 489/2011 is disposed of.

(Order dictated and pronounced in the open Court.)

(D.N. PANDA)
Judicial Member

MPS*

(MATHEW JOHN)
Technical Member

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
Court No.II

E/Appeal No.884/2006

(Arising out of order in appeal No.2/Ldh/06 dated 8.2.2006 passed by the Commissioner of Central Excise, Ludhiana)

Date of Hearing: 6.9.2011

M/s A.K. Alloys — Appellant

Vs

CCE, Ludhiana — Respondent

E/Appeal No.885/2006

Sh Kulbhushan Jain, Director — Appellant

Vs

CCE, Ludhiana — Respondent

Appeared for the Appellant: Shri Sudhir Malhotra, Advocate
Appeared for the Respondent: Shri K.P. Singh, DR

Coram: **Hon'ble Mr D.N. Panda, Member Judicial**
Hon'ble Mr. Mathew John, Member Technical

FINAL ORDER No. 872-873/2011-EX

Per D.N. Panda:

Learned Counsel submits that arbitrary adjudication was done presuming the capacity of production to be 4 MTs as against installed capacity of 3 MT. Investigating team when alleged that they intervened in the process of production of appellant on 29.2.04 and 1.3.04, they did not make a panchnama nor delivered copy thereof to the Appellant to establish their allegation. Statement taken from the person dealing with excise matter on 1.3.04 was under coercion. He invited our attention to page 31 of the appeal folder to show that although statement was stated to have been recorded from Shri Kulbhusan Jain, that was written by another person named Ashok Kumar Jain and Sri Kulbhusan Jain was made to sign the same.

1.1 He further drew our attention to page 38 of the appeal folder to submit that confining Shri Kulbhushan in his office, the statement in question was first typed in the computer of the Appellant by Investigating team and under pressure, they directed excise person of appellant to write the same in his handwriting telling him that Shri Kulbhushan typed the statement and that was to be written by him. Manuscript of the statement was written by the excise person and that was brought to Shri Kulbhusan Jain for his signature in the capacity of Director of Appellant company. Such statement was not recorded following due process of law for which that cannot be used as evidence against appellant. That was written behind the back of appellant and lost its evidenciary value. Therefore, by a letter dated 2.3.2004, Shri Kulbhusan made retraction of the said statement recorded on 1.3.2004 sending a complaint to the Commissioner by Regd Post Receipt No. 175 dated 3.3.2004. He specifically alleged that the manuscript statement written by Excise Clerk was not acceptable to the appellant and he categorically retracted contents thereof on the next day of recording of the statement.

1.2 Learned Counsel further submits that no legal sanctity can be attached to the above manuscript when the authorities did not give copy of Panchnama forthwith nor supplied thereafter even when request was made in that behalf. The appellant specifically made a request for furnishing copies of panchnama by his letter dated 20th September, 2005 (appearing at page 32 of the appeal folder). The appellant again made a request on 17.1.2006 to supply copies of such document while furnishing reply to the show cause notice. For that, he invites attention to page 36 of the appeal folder. But repeated prayer of the appellant was turned down by Authorities.

1.3 It was also submitted on behalf of the appellant that there was total failure on the part of Respondents to provide copies of necessary evidence when allegations were made in the show cause notice. It was submitted that when the show cause notice was issued on 8.11.2006, impugned order was passed on 8.2.2007 i.e. within three months, completely ignoring prayer of appellant to provide copies of document for which the adjudication made was total disregarding , law for which that shall not sustain.

1.4 It was further submission of the learned Counsel that there was no change of capacity of plant for no cogent or contrary evidence brought by Revenue in show cause notice. They did not make allegation of suppression of purchase of input nor did they have evidence on the allegation of clandestine removal. Suspicion however grave shall not be substitute of proof. Therefore, the adjudication made arbitrarily is unsustainable and the second appellant is also not liable to penalty.

2. Learned DR Shri K.P. Singh opposes entire averments made by the learned Advocate. He drew our attention to page 49 of the

appeal folder to show that there was enhancement of capacity of electricity from 1199 kwh to 2250 Kwh. His further argument was that the power consumption was higher with production as has been alleged in the show cause notice. He sought time to produce documents for contesting Revenue's case after 5 (five) years of pendency of appeal before Tribunal. He states that there was no proper retraction since the statement recorded was correct. Further he submits that retraction was not received in the office of the Commissioner.

3. Heard both sides and perused the records.

4.1 We have thoroughly looked into the case records before us and also relevant documents to which our attention was drawn. So also perused the show cause notice which made allegation of higher production. We would have certainly gone with Revenue had the department brought evidence to record suggesting that the quantum of production alleged was due to suppression of purchase of input or there existed evidence of clandestine removal and also corroborative evidence to show enhancement of capacity by necessary electrical installation and evidence of electricity consumption or any communication of evidenciary value from electricity authority to plead higher plant capacity. There is nothing on record to show that high power connection supported by evidence was made on a particular date and that resulted in higher amount of production.

4.2 So far as the production quantum is concerned, there is also no evidence on record to show that the authorities intervened lawfully recording the output in the presence of witnesses. When the statutory authority entered premises of assesse, the ~~later~~ latter has every right to ask for copy of panchnama and copy of joint evaluation of production or quantum of production. Non-providing of copy of such document made the intervention unlawful. It shows that the authority had no respect to the principles of natural justice to do fair adjudication. There was no trial production done on 1.3.2004 to substantiate the allegation in the show cause notice so also no technical report was obtained by Revenue to show that 3 MTs Capacity plant can produce the quantity alleged by Revenue. Show cause notice did not disclose any evidence that gave rise to allegation therein. Therefore, a hypothetical case appears to have been made by Revenue in excessive exercise of its jurisdiction to the detriment of justice.

4.3 The retraction statement to which our attention was drawn appearing at page 38 of the appeal folder makes a serious allegation against Revenue about unfair recording of the statement in question. The manner the statement was recorded at page 25 to 31 is testimony thereof. This compels to say that public servants should not shake confidence of citizens on law. Had the author of the statement been asked to state the reason why he himself failed or prevented to write his statement when that was recorded by a different person and had such reason been recorded that could have established case of Revenue. Why the deponent was prevented to record his own statement remained unexplained on record. It appears that a statement written by a different person was made to be signed by a literate person. That fails to get sanctions of law. When Shri Kulbhusan does not appear to be illiterate since he has subscribed his signature in English, Revenue could have ensured recording of statement by him or recorded the reason preventing him to write his statement since Shri Ashok Kumar Jain was scriba. Further, the writer of the statement has not stated why he had written the statement and whether that was recorded according to the dictation of the Author and read over and explained to him. No believable reason has been recorded on the above, while the deponent does not appear to be illiterate. When Section 14 evidence was recorded in the manner not acceptable to law, in absence of cogent evidence to the contrary, that cannot inculpate the appellants. It is also surprising that the Department failed to provide copies of panchnama even though there were repeated requests made by Appellant to lead their defence.

5. We have advantage of reading decision of the Tribunal in the case of R.A. Castings reported in 2011 (269) ELT 337 (Trib.) in which Tribunal held that electricity consumption is not the criteria to determine output level. This was upheld by Hon'ble Allahabad High Court in R.A. Casting dismissing appeal of Revenue. SLP of Revenue was also dismissed by Apex Court as reported in 2011 (269) ELT A-108 (SC).

6. We would have certainly come to the rescue of Revenue had the statement been recorded in a manner known to law and cogent evidence had been brought to record to prove output cleared

clandestinely. No cogent evidence is on record to show either suppression of purchase of input or clandestine removal of goods in fool ~~full~~ proof manner known to law for which, it can be painfully said that the adjudication has no legs to stand. Both the appeals are therefore, allowed with consequential relief, if any.

(Order dictated and pronounced in the open Court.)

(MATHEW JOHN)
Technical Member
MPS*

(D.N. PANDA)
Judicial Member