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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/1724/2011 - EX[DB] WITH E/M/966&968/2011-EX Date **06/01/2012**
E/S/2285/2011-EX

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

To :
M/S KESRI STEELS LTD
A-350, RIICO INDUSTRIAL AREA, BHIWADI(RAJ)

M/S KESRI STEELS LTD Appellant
Vs
C.C.E. JAIPUR I **MISC ORDER NO. 04-05/2012-EX** Respondent
STAY ORDER NO. 21/2012-EX

I am directed to transmit herewith a certified copy of **Final order No.** A/6/ **2012 EX[DB]** dated 27-12-11
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. JAIPUR I
N.C.R.BUILDING, STATUE
CIRCLE, "C" SCHEME, JAIPUR
302005.

2. Adv. / Consult
MR.R. SANTHANAM
C-3/210, JANAK PURI, NEW DELHI - 110 058.

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-3
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
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing : 9.12.2011

Excise Misc. No. 966 & 968 of 2011, Excise Stay No. 2285 of 2011 and Appeal No. 1724 of 2011

[Arising out of Order-in-Original No. 23/2011(C.E.) Commr. dated 25.2.2011 passed by the Commissioner of Central Excise, Jaipur)

Coram:
Hon'ble Shri S.S. Kang, Vice President
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?	Yes
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3.	Whether their Whether their Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	NO

M/s Kesri Steel Limited — Appellant

Vs.

CCE, Jaipur — Respondent

Appearance:

Appeared for Appellant : Shri R. Santhanam, Advocate
Appeared for Respondent : Shri I. Baig, DR

CORAM: Hon'ble Shri S.S. Kang, Vice President
Hon'ble Shri Mathew John, Member (Technical)

MISC Order No. 04-05/2012-EX (BR)
STAY order No 21/2012-EX (BR)
FINAL Order No.A/6/2012-EX(BR).....dated............

Per Mathew John :

After hearing both the parties for some time we find that the impugned order is passed without complying with principles of natural justice. So we waived the requirement of pre-deposit of dues for hearing the appeal and proceeded to dispose of the appeal itself.

2. Appellants are manufacturers of stainless steel ingots and alloy steel ingots. Revenue made out a case that the appellants took fraudulent Cenvat credit amounting to Rs. 2,57,94,584/- during the period 31-12-2004 to 25-02-2008 on copper ingots which were not used in the manufacture of their final products. So Revenue issued a show cause Notice dated 12-10-2009 for recovery of the said amount along with interest and penalties.

3. The case made out in short is that they had taken credit of duty paid on copper ingots which will account for about 12% by weight of the products Manufactured by them whereas for manufacturing stainless steel copper is needed to a maximum extent of 2% or so. So it is argued that all the copper ingots on which they had taken credit have been removed as such without reversing the credit taken when it was received in the factory of the appellant.

4. The main evidences are :-

(a) BIS standards for stainless steel;

(b) A few test reports recovered from factory premises;

(c) Statement of the Chemist of the appellant;

(d) Purchase orders placed on a dealer of the Appellant by Jindal Stainless Ltd.

(e) Sample melting reports of stainless steel manufactured by appellants at the end of the buyer, Jindal Stainless Steel.

(f) Test reports of certain samples by CRCL Mumbai.

5. The appellants submit that only a few of the relied upon documents have been supplied to the appellants and remaining relied upon documents have not been supplied in spite of repeated requests. Further the documents recovered from their premises on 26-02-2008, but not relied upon in SCN, have not been returned to them even after issue of SCN on 12-10-2009. They submit that Revenue officers are just refusing to comply with Rule 24A of the Central Excise Rules which came into force from 07-07-2009 itself.

They produced copy of their letter dated 03-11-2009 addressed to Commissioner of Central Excise Jaipur acknowledged on 05-11-2009. In the latter the appellants have stated that they had received only documents at S. Nos. (ii), (iv), (v), (ix), (x), (xi), (xii), (xiii), (xiv), (xv), (xvi) and (xvii). They asked for documents at S. No. (i), (vii) and (viii). They followed up the matter with letter dated 16/02/2010 requesting to let them know about the status of samples drawn from their factory premises as well as that of sample drawn from their dealer's premises. They also requested for inspection of the records of investigation. On 14th Dec 2010 they requested for inspection of the complete set of documents including the non-relied upon documents but the requests have not been responded to. Since they were not able to have a look at all the documents they were not able to furnish reply in time. The adjudicating authority proceeded to decide the case ex-parte in violation of principles of natural justice.

6. The Ld A. R. for revenue points out SCN was issued on 12-10-2009, but no reply was received from the appellants till February 2011. They were given opportunity for personal hearing on 24-11-2010, 16-12-2010 and 12-01-2011 and on 02-02-11 but the appellants were asking for more and more documents and did not furnish any reply. He points out that the appellants were deliberately adopting delaying tactics and hence there is no violation of principles of natural justice.

7. We have heard arguments on both sides and perused the records. The adjudicating authority or the investigating authority is just not willing to supply all the relied upon documents. They are also not willing to comply with Rule 24A of the Central Excise Rules. The letter dated 03-11-2009 from the appellants is acknowledged in para 2.1 of the order. The action taken thereon is not specifically stated. There is an assertion in para 3.2 that all documents have been supplied. The Appellants dispute this. The adjudicating authority appears to be taking shelter under letter

dated 24-11-2010 from the advocate requesting for one month's time for furnishing reply to suggest that the appellants had all the records with them for furnishing reply. This cannot be accepted as an argument because when an advocate gets a brief he may be under the impression that the asseesee has all the documents required. Only when effort is taken to furnish reply, the advocate will know that the required documents are with the department. So we do not see any delaying tactics when we find that adjudicating authority is not willing to comply with Rule 24A of the Central Excise Rules. We also note the fact that assessee on his own has been asking from 03-11-2009 onwards for the required documents.

8. The facts brought out by the SCN can give rise to a suspicion that there has been substantial evasion of duty by the appellant. In such a case it is extremely necessary that Revenue proceeds more systematically and speedily to complete the adjudication proceeding. Speed achieved with lethargy to supply the relied upon documents and unwillingness to comply with provisions of Rule 24A can only generate work all around with no gain in revenue terms.

9. The adjudicating authority has written two paragraphs, para 3.2 and para 3.3, on his idea of natural justice. Natural justice is not a codified law and much more can be written on subject. But we feel that that may not help in expeditious disposal of this case. But we consider it proper to lay down specific guidelines in this case for complying with principles of natural justice.

10. Adjudicating authority is directed to take the following steps:-

(i) Copies of all relied upon documents should be furnished to the appellant against proper acknowledgement listing the papers being furnished. If any records recovered as per panchanamas are to be relied upon it should be specifically brought to the notice of the appellant rather than through an oblique reference to it by relying on it by just mentioning panchnamas as evidence. This can be done while furnishing the relied upon documents.

(ii) All the records seized from the appellants other than those at (i) above should be returned to the appellants to comply with Rule 24A of Central Excise Rules 2004.

(iii) It should be informed to the appellants as to which of the samples taken during investigation were tested and all such reports should be furnished to the appellants even though they are not mentioned as a Relied Upon Document. If any of them are in favour of the appellant they have every right to get such reports. If any such sample is not tested, the position may be informed to them.

11. The appellants have been asking for inspection of the investigation file also. The investigating authority has refused it. This gives rise for an argument that there is something in the investigation file which is favorable to the appellant. It may be noted that after Right to Information Act has been enacted there is hardly anything available in a government file which cannot be disclosed. So the adjudicating authority may note that any information that cannot be denied under provisions of the RTI Act cannot be refused to an appellant who is being proceeded against. So if the request is being refused reasons should be recorded.

12. After complying with the above directions, the appellants should be given two months to furnish reply. Thereafter steps as are necessary for complying with further natural justice should be taken and adjudication order passed.

13. The impugned order is set aside and the matter is remanded to the adjudicating authority for denovo adjudication after complying with direction as above.

14. Thus both stay petition and appeal are disposed of.

(Operative portion pronounced in court on 09-12-11)

(S. S. Kang)
Vice President

(Mathew John)
Member (Technical)

R.M.