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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/473 /2005 - EX[DB] Date **26/06/2012**

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

To :
M/S NIBI STEELS LTD.
VILL &P.O-JAMADIN, TAHSIL-GHOSI,
DISTT.MAU(U.P)

M/S NIBI STEELS LTD. Appellant

Vs

C.C.E ALLAHABAD Respondent

I am directed to transmit herewith a certified copy of **Final order No.A/717 2012 EX[DB]** dated 07-6-12 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 ALLAHABAD
38,M.G.MARG, CIVIL LINES,
ALLAHABAD

2. Adv. / Consult
MR.L.P ASTHANA
R-163, SECOND FLOOR, GREATER KAILASH-1, NEW DELHI - 110 048.

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.
Principal Bench, New Delhi

COURT NO. I

DATE OF HEARING/DECISION : 07/06/2012.

Excise Appeal No. 473 of 2005

[Arising out of the Order-in-Original No. MP (Dem-149/2003)31 of 2004 dated 28/09/2004 passed by The Commissioner, Central Excise, Allahabad.]

Hon'ble Shri Justice Ajit Bharihoke, President
Hon'ble Shri Rakesh Kumar, Member (Technical)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	:
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:
3.	Whether their Lordships wish to see the fair copy of the order?	:
4.	Whether order is to be circulated to the Department Authorities?	:

M/s Nibi Steels Ltd. — Appellant

Versus

CCE, Allahabad — Respondent

Appearance

Shri L.P. Asthana, Advocate – for the Appellant.

Shri I. Beg, Authorized Representative (DR) – for the Respondent.

CORAM : **Hon'ble Shri Justice Ajit Bharihoke, President**
Hon'ble Shri Rakesh Kumar, Member (Technical)

FINAL Order No. A/717/2012-EX(BR)

Per. Shri Rakesh Kumar :-

The appellant manufacture Ordinary Denatured Spirit (ODS), Special Denatured Spirit (SDS) and Rectified Spirit (RS) falling under Central Excise Tariff Heading No. 22.04 from molasses. They availed Cenvat credit of duty on molasses used in the manufacture of ODS, SDS and rectified spirit. While ODS and SDS were dutiable, rectified spirit was chargeable to nil rate of duty and was thus an exempted final product. The department's allegation is that during the period of dispute i.e. during 10/5/2000 to 31/6/02 period, though the appellant used common Cenvat credit availed input i.e. molasses in the manufacture of dutiable final products (ODS and SDS) and exempted final product (Rectified Spirit), in accordance with the provisions of Section 57AD of Central Excise Rules, 1944/ Rule 6 (2) of Cenvat Credit Rules, 2001/2002, they did not maintain separate account and inventory of inputs meant for exempted and dutiable final products and, therefore, in respect of clearances of exempted final product, they were liable to pay an amount equal to 8% of the sale value. Besides this, it was also found that during 10/5/2000 to 30/6/2002 period, duty amounting to Rs. 1348/- had been short paid in respect of ODS. It is on this basis that proceedings were initiated against the appellant for recovery an amount equal to 8% of the sale value of the exempted final product (rectified spirit) alongwith interest, recovery of short paid duty of Rs. 1348/- in respect of ODS alongwith interest and also for imposition of penalty. The show cause notice was adjudicated by the Commissioner vide order-in-original dated 28/9/04 by which the demand of Rs. 59,73,020/- was confirmed under Rule 12 of the Cenvat Credit Rules, 2001/2002 alongwith interest and duty demand of Rs. 1348/- was confirmed alongwith interest under Section 11A (2) and penalty of equal amount was also imposed on the appellant under Rule 13 ibid. The appellant, however, prior to adjudication had paid the disputed amounts of Rs. 59,73,020/- and Rs. 1348/-. Against this order of the Commissioner, this appeal has been filed.

2. Heard both the sides.

3. Shri L.P. Asthana, Advocate, the learned Counsel for the appellant, pleaded that the dispute pertains to the period when there was no machinery provision for recovery of an amount payable as per the provisions of Rule 57AD (2) of Central Excise Rules, 1944/Rule 6 (3) of Cenvat Credit Rules, 2001/2002, which had not been paid, that the recovery provisions were introduced by adding an explanation to Rule 6 (3) Cenvat Credit Rules, 2001/2002/Rule 57AD (2) of Central Excise Rules, 1944 with retrospective effect by Section 82 of the Finance Act, 2005, that by virtue of the retrospective amendment, while the amount not paid could be recovered alongwith interest for the past period, penalty could not be imposed and in this regard he relies upon the judgment of Hon'ble Karnataka High Court in the case of **CCE and ST LTU, Bangalore vs. Bharat Electronics Ltd.** reported in **2011 (267) E.L.T. 172 (Kar.)** and also the judgment of this

Tribunal in the case of **CCE, Allahabad vs. JVH Sugar Corporation Ltd.** (final order No. 873/2009 dated 15/10/09), and that in view of this penalty would not be imposable. He, however, stated that penalty of Rs. 1348/-, which has been imposed in respect of clearances of ODS without payment of duty, would be attracted and, as such, he does not contest the same.

4. Shri I. Beg, learned SDR defended, the impugned order by reiterating the findings of the Commissioner in it and emphasised that besides the confirmation of the demand for the amount payable under Rule 6 (3) of Cenvat Credit Rules 2001/2002/Rule 57AD (2) of Central Excise Rules, 1944 alongwith interest on the same, penalty would also be attracted, that the penalty would attracted as the appellant during the period of dispute had not declared the manufacture of exempted final product (Rectified Spirit) in the ER-1 returns filed by them, that manufacture and clearance of rectified spirit by the appellant using the Cenvat credit availed molasses was detected only on the scrutiny of their private records and, therefore, penalty under Rule 13 of the Cenvat Credit Rules had been correctly imposed.

5. We have carefully considered the submissions from both the sides and perused the record.

6. In this case, there is no dispute about the fact that during period from 10/5/2000 to 31/6/02, common Cenvat credit availed input – molasses had been used for dutiable as well as

exempted final products, but neither separate account and inventory of molasses meant for dutiable and exempted final products had been maintained nor the appellant had paid the amount in terms of the provisions of Rule 57AD (2) of Central Excise Rules, 1944/Rule 6 (3) of Cenvat Credit Rules, 2001/2002. Therefore, the provisions of Rule 57AD (2) of Central Excise Rules 1944/Rule 6 (3) of Cenvat Credit Rules, 2001/2002 would be attracted. In this appeal, the appellant do not dispute their liability to pay the amount which, in fact has been paid by them. The dispute is about the interest and penalty. We are of the view that even though during the period of dispute, there was no provision for recovery of the amount payable under Rule 6 (3) of Cenvat Credit Rules, 2001/2002/Rule 57AD (2) of Central Excise Rules, 1944 from an assessee who had not paid the same, since such a provision for recovery was introduced with retrospective effect only by Section 82 of the Finance Act, 2005, while the amount not paid can be recovered alongwith interest by invoking the recovery provision, in view of the judgment of Hon'ble Karnataka High Court in the case of **CCE and ST LTU, Bangalore vs. Bharat Electronics Ltd.** (supra) and also the judgment of this Tribunal in the case of **CCE, Allahabad vs. JVH Sugar Corporation Ltd.** (supra), penalty cannot be imposed. In view of this, while the demand for the amount demanded under Rule 6 (3) Cenvat Credit Rules, 2001/2002/Rule 57AD (2) of Central Excise Rules, 1944 alongwith interest is upheld, the penalty of Rs. 59,73,020/- imposed on the appellant is set aside. As regard, the penalty of Rs. 1348/- for clearance of ODS without payment of duty, the same is not disputed and is upheld. The appeal stands disposed of, as above.

(Dictated and pronounced in the open court.)

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

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