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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

E/CO. NO./127/2005
Appeal No. : E/2177/2005-EX[DB]

Dated: **14/09/2012**

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

C.C.E. LUDHIANA
Central Excise House, 'F' Block, rishi
Nagar, Ludhiana 141001 (Punjab)

C.C.E. LUDHIANA (Appellant)

VS

SHAKEEL METALS (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **A/1153/2012-EX[DB]** dated **12/09/2012** passed by the Tribunal under section **35-C(1) of the Central Excise and Salt Act, 1944.**

Assistant Registrar
EXCISE Appeal Branch

Copy To,
1. Respondent
SHAKEEL METALS
Milkh Bazar, Malerkotla (Punjab)

2. Advocate(s) / Consultant(s): MR. JATINDER MOHAN, CCN.
11A, STREET NO. 2, GHUMAN NAGAR,
SIRHIND ROAD, PATIALA-147001

3. C.D.R
4. Bar Association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New Delhi
6. M/s Centax Publications 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. Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Ameer Pet, Hyderabad – 500038
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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 : 15/06/2012.
DATE OF DECISION : 12/9 /2012.

Excise Appeal No. 2177 of 2005 with CO Application No. 127 of 2005

[Arising out of the Order-in-Appeal No. 140/CE/APPL/LDH/2005 dated 16/03/2005 passed by The Commissioner (Appeals), Central Excise, Ludhiana.]

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?	:

CCE, Ludhiana — Appellant

Versus

M/s Shakeel Metals — Respondent

Appearance

Shri R.K. Verma, Authorized Representative (DR) – for the appellant.

Shri Jitender Mohan, Advocate - for the Respondent.

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

FINAL Order No. A/1153/2012-EX(BR) Dated : 12/9/2012

Per. Rakesh Kumar :-

The facts giving rise to this appeal and Cross Objection are, in brief, as under.

1.1 The respondent is a Proprietorship firm of Shri Mohd. Shakeel manufacturing Brass Brazing Granules and brass ingots chargeable to Central Excise duty. During the period of dispute i.e. during period from 2/6/98 to 7/8/01, they were neither having Central Excise registration nor were paying any duty on the ground that their products are fully exempt from duty under Notification No. 8/1998-CE and its successor notifications. In August, 2001 inquiries were conducted about the product being manufactured by them and the officers were of the view that the goods being manufactured by them are correctly classifiable under sub-heading 7403.21 as Copper Zinc Base Alloys (brass) and that the same are excluded from the purview of the SSI exemption, as the SSI exemption notification covers only certain items covered by sub-heading 7403.21 namely – "cast Brass Bars/Rods of length not exceeding 3 feet, cast brass bars/rods of length not exceeding 10 feet used in factory of production for making wires, copper flats of weight not exceeding 2 kgs. used for making copper strips falling under 7409 and brass billets weighting upto 5 kgs." and all other items of sub-heading 7403.21 are excluded from the purview of the SSI exemption notification. Since the brass ingots and the Brass Brazing Granules were not covered by the items covered under the SSI exemption, the officers were of the view that the appellant were liable to pay Central Excise duty in respect of the goods cleared by them as the SSI exemption was not applicable to it. On this basis, a show cause notice dated 2/8/08 was issued to them for demand of Central Excise duty amounting to Rs. 12,59,121/- in respect of clearances of Brass Brazing Granules and brass ingots during the period from 2/6/98 to 7/8/01 alongwith interest on this duty, imposition of penalty on the appellant firm under Section 11AC and also for imposition of penalty on Shri Mohd. Shakeel, Proprietor of the appellant company under Rule 26 of the Central Excise Rules, 2001. This show cause notice was adjudicated by the Joint Commissioner vide order dated 18/3/07 by which the duty demand was confirmed against the appellant firm alongwith interest and beside this, while penalty of equal amount was imposed on the appellant firm under Section 11AC, penalty of Rs. 25,000/- was imposed on Shri Mohd. Shakeel, Proprietor of appellant company under Rule 26 of Central Excise Rules, 2001. The appellant firm filed an appeal against this order of the Joint Commissioner to the Commissioner (Appeals). The Commissioner (Appeals) vide order-in-appeal dated 16/3/05 upheld the duty demand of Rs. 28,433/- in respect of brass ingots after giving the cum duty benefit. However, as regards, the duty demand in respect of Brass Brazing Granules, the same was dropped on the ground that the Brass Brazing Granules are correctly classifiable as "other articles of copper" under sub-heading 7419.99 of the Tariff and, hence, eligible for SSI exemption. On this basis, the Commissioner (Appeals) set aside the remaining amount of duty demand in respect of Brass Brazing Granules. He also set aside the penalty on the ground that this is not a case of clandestine removal.

1.2 Against the order of the Commissioner (Appeals) with regard to dropping of duty demand in respect of Brass Brazing Granules, this appeal has been filed by the Revenue and in respect of this appeal filed by the Revenue, the respondent have filed a cross objection.

2. Heard both the sides.

3. Shri R.K. Verma, the learned DR for the appellant, assailed the impugned order by reiterating the grounds of appeal in the Revenue's appeal and pleaded that the Brass Brazing Granules are nothing but unwrought copper alloys and, hence, the same are correctly classifiable under sub-heading 7403.21, that the Brass Brazing Granules cannot be called an article of brass, as the same have not been made by the working on the unwrought brass and that in view of this, the impugned order is not correct.

4. Shri Jitender Mohan, Advocate, the learned Counsel for the respondent, defended the impugned order pleading that the Brass Brazing Granules, which are used for jointing two pieces of metal are ready to use article and, hence, have been correctly classified under sub-heading 7419.99 of the Tariff. He, therefore, pleaded that there is no infirmity in the impugned order.

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

6. The Brass Brazing Granules, in question, are made by pouring molten brass in cold water. These pallets/granules are used for the purpose of braising and welding. In our view the term of 'article' would cover the items made by working on a metal. The goods, in question, are of in the nature of unwrought metal. Heading 7403.21 covers "copper zinc base alloys (brass)". Though the goods, in question, are used for soldering and brazing, they are not classifiable under 7406 as the same are not in form of powder or flakes. In our view, therefore, the Brass Brazing Granules/pallets would be correctly classifiable under 7403.21 and since they are other than the items specified in the SSI exemption notification, the same would not be available to them. The impugned order classifying the Brass Brazing Granules under sub-heading 7419.99 is, therefore, not correct. Since, in this case, the respondent, though manufacturing dutiable items not eligible for SSI exemption, had neither obtained Central Excise registration nor were paying any duty nor had intimated to the department about their activity, in our view, the extended period under proviso to Section 11A (1) would be available to the department for recovery of duty. Therefore, the impugned order setting aside the duty demand and penalty on the respondent is, not correct. The same is set aside and in this regard the order passed by the original Adjudicating Authority is restored. The

Revenue's appeal is allowed. The cross objection filed by the respondent also stands disposed of.

(Pronounced in the open court on 12/9/2012.)

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

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