FAX : 011-26108426 **REGISTERED / AD**

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

Dated: **03/12/2012**

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **A/1347/2012-EX[DB]** dated **29/11/2012**

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section **35-C(1)** of **the Central Excise and Salt Act, 1944.**

Asstt. Registrar(EXCISE Appeal Branch)

Application	Appeal	Name and Address of Appellant
1	E/836/2005	**VERMA METALS & CONDUCTORS LTD.** 32-E, Indl. Area, Govindpura, Bhopal
		Name and Address of Respondent
2		**C.C.E Bhopal** Hoshangabad Road, 48, Administrative Area, Area Hills, Bhopal (M.P.) 462011

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Other Appellants and Respondents as per Annexure

Copy To

3 Advocate(s) / Consultant(s):

Z. U. Alvi
D-8,BDA COLONY,
ADJACENT GARUDA TRAVELS.,
KOH-E-FIZA,
BHOPAL,
MADHYA PRADESH
462001

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4 Bar Association, CESTAT, Delhi

5 Director Publications, Customs, Excise, I.P. Estate, Delhi

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, 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, Satellite Road, Ahmedabad-15

10 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

11 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

12 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

13 C.D.R. 14 Office Copy 15 Guard File

Asstt. Registrar(EXCISE Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
COURT NO. 1

Date of Hearing: 15.11.12
Date of Decision: 29/11/12

Excise Appeal No. E/836/2005

[(Arising out of the Order-in-Appeal No. 423-CE/BPL/2004 Dated 29.11.2004 passed by the Commissioner (Appeals) of Central Excise, Bhopal)].

M/s. Vema Metals & Conductors Ltd. — Appellant

Vs.

CCE, Bhopal — Respondent

Appearance

Sh. Z.U.Alvi, Advocate - for the Appellant
Sh. M.S. Negi, A.R (DR) for the Respondent

Coram: Hon'ble 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) Rule, 1982?	:
2.	Whether it would be released under Rule 27 of the CESTAT (procedure) Rule, 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?	:

Final **Order No.** 41/13.49/2012-EX(BR)

Per Rakesh Kumar

The appellant are manufacturer of Copper Wire and Rectangular Copper Bars chargeable to Central Excise duty. During the period of dispute they had a contract with M/s. BHEL for conversion of Copper Wire Bars into Rectangular Copper Bars with specified sizes and dimensions on job work basis. In terms of the contract, the appellant were required to return 98 Kg of processed material out of every 100 Kg of copper wire bars received from BHEL. The appellant were operating under notification No. 214/86 CE and accordingly while BHEL were availing cenvat credit in respect of copper wire bars, the appellant were returning the rectangular copper bars of specified dimension to BHEL without payment of duty and rectangular copper bars were being used by BHEL in manufacture of finished goods which were being cleared by BHEL on payment of duty. However, since in conversion of copper wire bars into rectangular copper bars, in addition of 2% burning loss, other off cut waste to the extent of 16% above also arises and since the appellant were not equipped for re-processing this waste, they were clearing this waste on payment of duty and to compensate BHEL for this 16% waste, which ~~while~~ they were supposed to reprocess and convert into rectangular bars of specific size and dimensions, they were purchasing duty paid copper wire bars from other manufacturers and processing the same into rectangular copper bars of specified sizes and clearing the same to BHEL. The appellant were availing cenvat credit in respect of duty paid copper wire being purchased from outside and at the time of clearance of rectangular bars to BHEL, they were paying an amount equal to cenvat credit availed i.e. were reversing the cenvat credit. The department was of the view that since these rectangular bars made out of copper bars procured from outside were job work goods, in respect of the same, duty was required to be paid on the assessable value determined on the basis of Hon'ble supreme court's judgment **in the case of Ujagar Print's reported in 1989 (39) E.L.T.- 493 (SC)** i.e. on the basis of cost of raw-material plus job charges. On this basis, the show cause notice dtd. 13.12.02 was issued to the appellant for demand of allegedly short paid duty amounting to Rs. 1,28,648/- during the period from 1.12.97 to 31.12.2000 and also for imposition of penalty on them u/s 11AC and Rule 173Q. The Show Cause Notice was adjudicated by Assistant Commissioner Vide Order in Original dtd. 28.11.03 by which the duty demand as mentioned above was confirmed and besides this, while penalty of same amount was imposed u/s 11AC, penalty of Rs. 5,000/- was imposed on the Appellant under Rule 173Q.

2. On appeal being filed to Commissioner (Appeals), the above order of the Asstt. Commissioner was upheld vide order in appeal dtd. 10.12.04. Against this appeal of the Commissioner (Appeals), this appeal has been filed.

3. Heard both the sides.

4. Sh. Z.U.Alvi, Advocate, the learned counsel for the appellant pleaded that in the situation of the case, the Apex Court's judgment in the case of Ujagar Prints (Supra), is not applicable, that Considering that the 16% copper wire bars procured from outside were substitute for BHEL supplied copper wire bars, issued under Rule 57F(4) and Notification No. 214/86CE, the clearances of the intermediate products by appellant would have to be without payment of duty only, that there is no dispute that the rectangular copper bars cleared by the appellant to BHEL (principal manufacturer) had been used for manufacture of their final products which were cleared on payment of duty, that even if the higher duty is charged by the Department on the rectangular copper wire bars cleared by the BHEL, its cenvat credit would be available to BHEL and as such it would be a revenue neutral situation and that in the situation of the case, there could not be any intention on the part of the Appellant to evade the duty and hence neither extended period of limitation is invokable nor penalty u/s 11AC would be impossible. He also sited the judgment of Larger Bench of

Tribunal **in the case of Sterlite Industries (I) Ltd. Vs. Commissioner of Central Excise, Pune, reported in 2005 (183) E.L.T. 353 (Tri.–LB.)**,wherein it was held when a ~~job-work~~ job-worker operating under Rule 57F and Notification No. 214/86CE, receives cenvat credit availed raw-material from the principal manufacturer for job work and when in addition to the raw-material received from the principal manufacturer, he also uses his own raw-material in respect of which he has availed cenvat credit, he is not required to reverse cenvat credit in respect of his own raw-material while sending the processed of material to the principal manufacturers without payment of duty. He pleaded that in view of the judgment of the tribunal, the cenvat credit in respect of the self procured copper wire bars was not required to be reversed and hence there is no question of demand of any duty.

4. Sh. M.S.Negi,the learned departmental representative, defended the impugned order be reiterating findings of the Commissioner (Appeals) and pleaded that there is no infirmity in the Commissioner (Appeal)'s order.

5. We have considered the submissions from both the sides and peruse the records. The appellant in terms of their contract with BHEL for processing of copper wire bars into rectangular bars of specified size and dimensions on job work basis, were required to return 98% of the raw-material in process form, as in term of the contract the burning loss of only 2% was permitted. There is no dispute that while BHEL were availing cenvat credit in respect of wire bars sent by them to the appellant for job work, the appellant were operating under

notification no. 214/86CE and sending the processed material to BHEL without payment of duty. In terms of Rule 57F(4) of Central Excise Rules 1944, the waste arising in the course of the processing of material received from the principal manufacturer was required to be returned to the factory of the principal manufacturer, unless the waste has been cleared by the manufacturer (job-worker) on payment of duty. In this case, the conversion of copper bars involved, in addition to 2% waste on account of burning loss, 16% waste on account of off size cuts. The appellant were required to re-process this waste and are reuse it for conversion into rectangular bars, but since the appellant did not have the facility for re-processing of this waste, this waste was cleared on payment of duty and they procured the duty paid copper wire bars from other manufacturers which were processed for conversion into rectangular bars and were cleared to BHEL. The dispute is about these rectangular bars made out of wire bars procured by the appellant from out side. In our view, since the appellant were required to return 98 Kg of rectangular bars out of every 100 Kg of copper wire bars received from BHEL and the procurement of copper wire bars from outside to the extent of 16% was in lieu of the sale of copper waste to the extent of 16%, the copper bars procured from outside have to be treated as owned by BHEL and since cenvat credit in respect of the same has been availed by the appellant, they would be liable to pay duty on the rectangular bars manufacturered out of the same, and this duty would be payable on the value determined in terms of the Apex Court's judgment in the Ujagar Prints (Supra) i.e. on the cost of wire bars procured from outside plus job charges. In our view the Larger Bench Judgment of the tribunal **in the case of Sterling Industries (I) Ltd. (Supra)** cited by the learned counsel of the appellant is not applicable to the facts of this case. Thus the duty has been correctly demanded by the department in respect of the rectangular copper wire bars manufacturered by appellant out of the wire bars procured by them, from outside.

6. As regards the limitation, ~~of~~ the extended period has been correctly applied, as the fact of manufacture of rectangular wire bars out of copper wire bars procured from outside was never disclosed by the appellant to the department.

7. In view of this, we do not find any infirmity ~~for~~ in the impugned order. The appeal is dismissed.

Order pronounced in the Court on 29/11/12

(Justice Ajit Bharihoke)
(President)

(Rakesh Kumar)
Member (Technical)

S.Kaur