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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/987/2006-EX[DB], E/988/2006-EX[DB]

Dated: **16/08/2012**

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

BIHAR TUBES LTD.
A-19,INDL
AREA,SIKANDRABAD(UP)

BIHAR TUBES LTD. (Appellant)

VS

CCE,NOIDA (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **A/943-944/2012-EX[DB]** dated **08/08/2012** 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**
CCE,NOIDA
Office of Commissioner of
Customs,Central Excise and Service Tax,
C-56/42, Sector-62, Noida - 201307

2. **Advocate(s) / Consultant(s):**
M.P. singh
43,Samaj Kalyan apartment F-block,Vikaspuri,N.Delhi

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. Office Copy
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Assistant Registrar
EXCISE Appeal Branch

14. **APOLLO PIPES P LTD.**
D-20 &E-6,INDL
AREA,DIKANDRABAD(UP)

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 : 20/07/2012.
DATE OF DECISION : 08/08/2012.

Excise Appeal No. 987 and 988 of 2006

[Arising out of the Order-in-Appeal No. 126-131/CE/APPL/NOIDA/ 2005 dated 23/12/2005 passed by The Commissioner (Appeals), Customs & Central Excise, Meerut – II .]

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 Bihar Tubes Ltd.]
M/s Apollo Pipes Pvt. Ltd.] Appellants

Versus

CCE, Noida Respondent

Appearance

Shri M.P. Singh, 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/943-944/2012-EX(BR) Dated : ________

Per. Rakesh Kumar :-

M/s Bihar Tubes Ltd., A-19, Industrial Area, Sikanderabad (hereinafter referred to as BTL) manufacture M.S. black and Galvanised pipes and tubes chargeable to Central Excise duty. M/s Apollo Pipes Pvt. Ltd., D-20, and E-6, Industrial Area, Sikanderabad (hereinafter referred to as APPL) manufacture PVC rigid pipes chargeable to Central Excise duty. Both the units alongwith another unit M/s V.S. Exim Pvt. Ltd., A-20, Industrial Area, Sikanderabad (hereinafter referred to as VSEPL), which manufactures M.S. black and galvanised pipes and tubes, belong to same group run by members of same family. In these appeals, we are concerned with the allegations against BTL and APPL. Both the units were visited by the Jurisdictional Central Excise officers on 27/28th June 2003 and among other checks, the stock of Cenvat credit availed inputs as well as finished products was verified in both the units. In case of BTL, during the course of physical verification of finished goods as well as Cenvat credit availed inputs, while shortage of 27.692 M.T. was detected in the stock of finished goods (M.S. black pipes involving duty of Rs. 75,322/-), shortage of 18.59 M.T. was detected in the stock of Cenvat credit availed HR coils (inputs) involving Cenvat credit of Rs. 59,012/-. The appellants voluntary debited the total Central Excise duty of Rs. 1,34,334/- in their RG-23A Pt. II account on 22/6/04.

1.1 In course of physical stock verification in the factory of APPL, shortage of 76 M.T. was detected in the stock of branded PVC pipes/sockets the duty involved in respect of which was Rs. 3,89,120/- which was debited by APPL on 28/6/03. In course of investigation the department also found that all the three units – BTL, APL and VSEPL were being run and controlled by the same person and hence for determining the eligibility for SSI exemption of APPL and VSEPL, the clearances of these three units must be clubbed and on this basis APPL and VSEPL would not be eligible for SSI exemption. On this basis the department was of the view that APPL and VSEPL have evaded duty to the tune of Rs. 24,76,143/- and Rs. 18,85,993/- respectively during the period from 1/3/2000 to 31/3/2004.

1.2 After issue of show cause notice, the Additional Commissioner of Central Excise, Noida vide order-in-original dated 1/6/05 -

(a) confirmed the duty demand of Rs. 24,76,143/- and Rs. 3,89,120/- against APPL alongwith interest on this duty under Section 11AB and beside this, imposed penalty of Rs. 28,65,263/- on APPL under Section 11AC of Central Excise Act, 1944 ;

(b) confirmed the duty demand of Rs. 18,85,993/- against M/s VSEPL alongwith interest and imposed penalty of equal amount on them under Section 11AC ;

(c) confirmed duty demand of Rs. 1,34,334/- against M/s BTL in respect of the shortage of finished products and raw material ;

(d) imposed penalty of Rs. 40,00,000/- on M/s BTL under Rule 173Q of Central Excise Rules, 1944 ; and

(e) imposed penalty of Rs. 5,00,000/- each on Shri Sanjay Gupta, Managing Director M/s BTL, Shri Vinay Gupta, Director APPL and VSEPL and Shri Sameer Gupta, APPL under Rule 26 of Central Excise Rules, 2001/2002.

1.3 On appeals being filed to Commissioner (Appeals) against this order of the Additional Commissioner, the Commissioner (Appeals) vide order-in-appeal No. 126-131/CE/APPL/NOIDA/ 2005 dated 23/12/2005 while setting aside the duty demands of Rs. 24,76,143/- and Rs. 18,85,993/- against APPL and VSEPL respectively and also the penalty on them under Section 11AC, upheld the duty demand of Rs. 3,89,120/- against APPL on account of shortage of PVC pipes and the duty demand of Rs. 1,34,334/- against BTL on account of shortage of cenvated inputs and finished products. The penalties imposed on BTL, APPL and VSEPL Shri Sanjay Gupta, Managing Director M/s BTL, Shri Vinay Gupta, Director APPL and VSEPL and Shri Sameer Gupta, APPL under Rule 26 were also set aside. The present appeals have been filed by BTL and APPL only against the confirmation of duty demands of Rs. 1,34,334/- and Rs. 3,89,120/- which have been upheld by the Commissioner (Appeals)'s order.

2. Heard both the sides.

3. Shri M.P. Singh, Advocate, the learned Counsel for the appellants, pleaded that the shortages were not actual shortages

as the same had not been ascertained by actual weighment of the inputs and finished goods, that the weight of the Cenvat credit availed inputs and finished goods had been determined by estimate only and that in view of this, the impugned order confirming duty demands of Rs. 1,34,334/- against M/s BTL and duty demand of Rs. 3,89,120/- against APPL is not sustainable.

4. Shri I. Beg, the learned SDR defended the impugned order by reiterating the findings of the Commissioner (Appeals) in it and emphasised that the stock taking had been done in presence of the representatives of the appellant companies and at that time the appellants had not raised any objection in respect of the method of determining the quantity of the finished goods and Cenvat credit availed raw material and on the contrary had debited the duty in respect of the goods found short.

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

6. In the case of BTL, there was shortage of 18.59 M.T. of Cenvat credit availed HR Coils and 27.692 M.T. of M.S. Black Pipes (finished goods). While the duty involved in respect of the shortage of 27.692 M.T. is Rs. 75,322/-, the duty involved in respect of the shortage of 18.59 M.T. of H.R. Coils is Rs. 59,012/. In course of stock checking in the factory of APPL, shortage of 76 M.T. was found in the stock of branded PVC pipes on which the duty involved was Rs. 3,89,120/-. At the time of stock taking in both the units, the appellant did not object to the method of

determining the quantity of the finished goods or the raw material and, as such, they accepted the shortages. In view of this, the appellant's plea at this stage that the method of determining the weight of stock of finished goods and raw material was not correct is difficult to accept. We, therefore, do not find any infirmity in the impugned order confirming duty/Cenvat credit demand in respect of these shortages. Both the appeals are, therefore, dismissed.

(Pronounced in the open court on 8/8/2012.)

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

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