

**Commissioner of Central Excise Vs. Devas Metal**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** May-02-2005

**Reported in :** (2006)(193)ELT121TriDel

**Judge :** P Bajaj

**Appellant :** Commissioner of Central Excise

**Respondent :** Devas Metal

**Judgement :**

1. In this appeal the revenue has contested the correctness of the part of the impugned order-in-appeal vide which the Commissioner (Appeals) has modified the order-in-original regarding confiscation of finished/ unaccounted goods/short found input as detailed there.

2. I have heard both the sides and gone through the record. The perusal of the record shows that some parts and accessories of motor vehicle shape and sections as detailed in para 5 of the impugned order were found lying unaccounted in the factory premises of the respondents at the time of visit of the officers on 10-6-1998 for verification of the stock. Ld. Commissioner (Appeals) has set aside the confiscation of the goods as well as imposition of redemption fine and penalty on the ground that the goods were lying still in the factory premises and the respondents had no intention to remove these goods by following the Tribunal's judgment detailed by him in para 5 of the order. But in view of the Bombay High Court judgment in the Kirloskar Brothers Ltd. v. Union of India and Ors. reported in

2002 (83) ECC 497 (Bom.) wherein it has been ruled that even in a case of non-accountal of goods, confiscation can be ordered and no mens rea is required to be established of the assessee for keeping the goods unaccounted.

Therefore, the impugned order-in-appeal taking a contrary view cannot be sustained and is reversed. The order-in-original regarding confiscation of the goods is restored. However, the redemption fine keeping in view the duty involved and the facts that the goods were still lying in the factory, is reduced to Rs. 25,000/- and penalty to Rs. 10,000/-.

3. On the short found pieces of parts and accessories, as detailed in para 6 of the impugned order, duty had already been paid by the respondents. Ld. Commissioner (Appeals) in my view has rightly not imposed the penalty as the duty was paid before issuance of SCN, in view of the Larger Bench decision in the case of CCE, Delhi v. Machine Montell (I) Ltd. 4. Similarly regarding the delayed debit of the duty in respect of the goods valued at Rs. 6910/-. Ld. Commissioner (Appeals) has rightly confirmed penalty under Rule 226 as the duty was debited on the next day of working day from the date of removal of the goods.

5. In respect of the short found goods (31.367 m.t. H.R. Coils), the duty has been set aside by the Commissioner (Appeals) on the ground that there was no proper weighment of the goods before arriving at the shortage quantity of the goods. I do not find any substantial evidence to dispute correctness of this ground taken by Id. Commissioner (Appeals) as without the actual weighment of the goods lying in the factory premises, on simple eye examination/estimation, the quantity of short goods could not be worked out as laid down by the Tribunal in the case of Agra Steel Corporation v. CCE 6. In view of the discussions made above, the impugned order accordingly stands modified. The appeal of the Revenue stands disposed of in the above terms.

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