

C.C.E., Chandigarh Vs. M/S. H.S.Steels (P) Ltd. and Others

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-12-2010

Judge : The Honourable Mr. M. Veeraiyan, Member (Technical)

Appeal No. : Excise Appeal No. 1017 of 2008, 1019 of 2008, 1020 of 2008-SM(BR)

Appellant : C.C.E., Chandigarh

Respondent : M/S. H.S.Steels (P) Ltd. and Others

Advocate for Pet/Ap. : Shri S.K. Bhaskar, DR for the Appellants. Shri Manish Saharan, Advocate for the Respondent

Judgement :

Per M. Veeraiyan:

These three appeals are by the Department arising out of common order-in-appeal No. 140-144/CE/CHD/ 2008 dated 15.2.2008 passed by the Commissioner (Appeals). There are other parties aggrieved by the order of the Commissioner (Appeals) and their appeals are not being dealt with in this order.

2. Heard both sides.

3. The relevant facts in Appeal No.1017/08 with Shri H.S. Steel (P) Ltd. as respondent is that the officers visited the factory premises on 23.9.03 and found

shortage of MS ingots weighing 18.540MT and the Cenvat credit involved amounting to Rs.41,313/- was debited on the same date. Shri Raj Kumar, authorised signatory attributed shortage as burning loss. The original authority while confirming the demand of duty imposed penalty of Rs.41,313/- under Rule 13 of Cenvat Credit Rules on the respondents which was set aside by the Commissioner (Appeals).

4. In Appeal No. E/1019/08 with M/s. Mahadev Steel Industries and E/1020/08 with Shri Naresh Joshi partner of M/s. Mahadev Steel Industries as respondents, the officers visited the factory premises on 26.9.2003 and found shortage of finished goods namely, Hot Rolled bars weighing 16.885 MT against the opening balance of 220.870 MT and no reason could be given by the partner. The duty involved amounting to Rs.44,250/- was debited on 27.9.2003. The original authority confirmed the demand of duty and imposed 44.250/- as penalty on the respondent firm under Rule 25 of the Central Excise Rules and also penalty of Rs.44,250/- on Shri Naresh Joshi partner under Rule 126 of the Central Excise Rules. On appeal the penalties have been set aside by the Commissioner (Appeals).

5. Learned DR reiterated the grounds of appeal. The learned Advocate for the respondent strongly supports the order of the Commissioner (Appeals).

6. I have carefully gone through the submissions. It is noticed that the Commissioner has given finding that the demand has been made merely on the basis of shortage of inputs in the case of HS Steel Pvt. Ltd. and shortage of finished goods in the case of Mahadev Steel Industries as they have not been able to satisfactorily account for shortage, the duty stands paid by them. However, Commissioner (Appeals) has noticed that no other evidence has been cited by them by the Department to impose penalty on the finding of clandestine removal of inputs/ finished goods as held by the original authority. In view of the above, he came to the conclusion that these cases filed under the ambit of section 11A 2(b) of the Act, question of penalty in the present case does not arise. The grounds of appeal do not reveal any facts which can upset the finding of the Commissioner (Appeals). That these cases are covered under section 11A (2B) of the Act.

Therefore, I hold that no valid grounds have been adduced to interfere with the orders of the Commissioner (Appeals) in so far as the above respondents are concerned.

7. Appeals are therefore, rejected.

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