



TAX ALERT

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2016-TIOL-655-CESTAT-AHM

Issue: Whether allegation of clandestine removal can be established merely on the basis of documents and statement collected from buyer of the assessee?

Facts: Assessee is a manufacturer of M.S. Ingots. Central Excise officer during investigation at assessee's buyer (M/s Vishnu Steel) found the name of assessee in their private records and based on that a Show Cause Notice (SCN) was issued on assessee demanding duty along with interest and penalty and also imposed penalty on the partner of assessee. The Adjudicating authority confirmed the demand. Being aggrieved assessee and partner of assessee filed an appeal before Commissioner (Appeals) who rejected the appeal of assessee and set aside the penalty imposed on partner. Therefore assessee and revenue both filed appeal before Tribunal.

Revenue Contention: Revenue contended that partner of the assessee accepted the clandestine removal of the goods, therefore evidence from the assessee was not collected. Further it also contended that assessee had not requested for cross examination before Commissioner (Appeals).

Appellant Contention: The appellant contended on following grounds:-

- That the entire case was made out on the basis of the statement of assessee's buyer.
- The name of other manufactures including the assessee's name was available in the private records of assessee's buyers and a similar proceeding was initiated against the other manufacturer .Where the Hon'ble Tribunal set-aside the demand of the duty along with interest.*
- Further appellant also contended that statements and documents of buyers and statement of partner was not cross examined.

Tribunal's Observation: The Hon'ble Tribunal taking references of various cases** observed that clandestine removal cannot be established merely on the basis of the statement of the buyers and documents recovered from them without taking any inquiry from the assessee. It also observed that the statement of the partner of the assessee is uncorroborative in nature.

Held: The Hon'ble Tribunal allowed the appeal filed by the appellant and rejected the appeal of revenue.

*M/S. Shiv Shakti Ingots Pvt.Ltd. vs. CCE -2015-TIOL-2657-CESTAT_AHM

**Flevel International vs. CCE, 2015-TIOL-2230-HC-DEL-CX

**CCE vs. Saakeen Alloys Pvt. Ltd., 2014-TIOL-739-HC-AHM-CX

**Arya Fibres Pvt. Ltd. vs. CCE, 2014-TIOL-15-CESTAT-AHM

**CCE, C&ST, Daman vs. Nissan Thermoware Pvt. Ltd., 2010-TIOL-877-HC-AHM-CXs