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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/5370/2004 - EX[BR] Date 16/09/2008

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

To :
M/S STEEL AUTHORITY OF INDIA LTD.
ISPAT BHAWAN LODI ROAD NEW DELHI
110003

M/S STEEL AUTHORITY OF INDIA LTD. Appellant

Vs

C.C.E.RAIPUR Respondent

I am directed to transmit herewith a certified copy of **Final order** No.689/08-EX **EX[BR]** dated 4-9-08

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
C.C.E.RAIPUR
DHAMTARI ROAD,TIKRAPARA,RAIPUR
2. Adv. / Consult SH. RAVI RAGHVAN, ADV., B-6/10, S.J. ENC. N. DELHI-29
3. S.D.R.
4. ~~J.C.D.R.~~
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017
7. M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12. Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai 60017
13. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Easy Service Tax Online Dot Com Pvt. Ltd. 407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad - 15
15. Office Copy
16. Guard file

AR-EX.

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R.K.Puram, New Delhi-110066.
Principal Bench, New Delhi.

E/5370/04

[Arising out of Order-in-Appeal No.146/RPR-II/04 dt.28.6.04 passed by the Commissioner(Appeals), Raipur)

For approval and signature:

Hon'ble Mr. S.S.KANG, VICE PRESIDENT
Hon'ble Mr. 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. SAIL — Appellant

Versus

CCE, Raipur — Respondent

Appearance
Shri Ravi Raghvan, Adv. For appellant
Shri C.S.Rajput, Authorised Departmental Representative(DR) For respondent

Coram: Hon'ble Mr. S.S.KANG, VICE PRESIDENT
Hon'ble Mr. RAKESH KUMAR, MEMBER TECHNICAL

Date of hearing: 4.9.08
FINAL Order No. 849/08 EX

Per S.S.Kang:

Heard both sides. The appellant filed this appeal against the impugned order whereby the credit of Rs.12,02,982/- was denied on the ground that the invoice was not in favour of the appellant unit, credit of

Rs.20,62,759/- was denied on the ground that necessary certificate under Rule 57E of Central Excise Rules was not produced by the appellant and credit of Rs.6,67,259/- was disallowed on the ground that invoices do not have details ~~under Rule 173~~ of Central Excise Rules. The impugned order whereby the credit was denied on other grounds is not under challenge, the appeal against the denial of credit on the other ground is not pressed by the appellant during the hearing of the appeal.

2. The contention is that Rule 57G and 57T of Central Excise Rules is amended by notification No.7/99 to the effect that credit would not be denied if all the particulars are not mentioned in the duty paying documents, ~~that credit shall not be~~ denied on minor procedural lapse. Thereafter Board's circular No.441/7/99-CX dt.23.2.99 was issued to the effect that credit would not be denied on procedural lapse without making proper enquiries regarding the duty payment of the inputs, their receipt in the factory and used in the manufacture of excisable goods. The contention of the appellant is that in the present case, there is no dispute regarding payment of duty in respect of the goods ~~received~~ in the factory and used in the manufacture of excisable goods; therefore, the impugned order is not sustainable.

3. The contention of the revenue is that it requires verification as per the amended provisions of Rule 57G and in view of the Board's circular, as the duty paying documents were not as per the provisions of Central Excise Rules, therefore, the credit was rightly denied.

4. We find that now vide Notification No.7/99 dt.9.2.99, Rule 57G and Rule 57T of Central Excise Rules has been amended and Board's circular dt.23.2.99 has been issued (for ready reference) The relevant paras are reproduced below:

"2. The Asstt. Commissioner, before issuing Show Cause Notice for wrong availment of Modvat credit by the assessee on any procedural grounds, shall conduct enquiries with regard to duty paid nature of the goods as the suppliers send, ensure that necessary information as mentioned in the Notification are available on the invoice and satisfies himself whether the goods have been used or are intended to be used as contemplated in the Modvat Rules. In case the assessee's invoice contains the details viz. description of the goods, assessable value, name and address of the factory or warehouse where the goods are to be received, and if the assessee has filed a declaration as contemplated in the Modvat rules, the Asstt. Commissioner having jurisdiction over the factory would allow the credit of duty so paid after making enquiries as above.

3. It should hereafter be ensure that Show Cause Notices are not issued for procedural lapses as mentioned in the Notification without making proper enquiries. Wherever the Asstt. Commissioner, after making due enquiry, is satisfied that the Modvat credit taken by the assessee is incorrect, adjudication proceedings in the normal course should be initiated. Efforts, however, should be directed towards reduction of litigation.

4. All pending cases may be disposed of accordingly".

5. In view of the circular which is also applicable to the pending cases, the impugned order is set aside and the matter is remanded to the adjudicating authority to decide afresh after taking into consideration the amended provisions of Rule 57G and Rule 57T and after affording an opportunity of hearing to the appellant. The appeal is disposed of as above.

Order dictated in the open Court.

(S.S.Kang)
Vice President

(Rakesh Kumar)
Member Technical

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