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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/3839/2004 - EX[DB]

Date 02/12/2008

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

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

M/S STEEL AUTHORITY OF INDIA LTD. Appellant
Vs
Respondent
C.C.E. RAIPUR

I am directed to transmit herewith a certified copy of **Final order No**. 894/2008- **EX[DB]** dated 27-11-08 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
THE COMMISSIONER OF CENTRAL EXCISE, RAIPUR CENTRAL EXCISE BHAWAN, DHAMTARI ROAD, TIKRAPARA RAIPUR (CG)
2. Adv. / Consult SH. RAVI RAGHAVAN, ADV.,
B-6/10, S.J. ENCLAVE,
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 - 3
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). Thyagarava Road. T. Nagar.Chennai
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-1
15 Office Copy
16 Guard file

Assistant Registrar
(Excise Appeal Branch)

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. II
Excise Appeal No. 3839 of 2004

[Arising out of the Order-in-Appeal No. 115/RPR-II/2004 dated 31/03/2004 passed by The Commissioner (Appeals), of Central Excise, Raipur (Chattisgarh).]

M/s Steel Authority of India Ltd. Appellant
[Shri Ravi Raghavan, Advocate]

Versus

CCE, Raipur Respondent
[Shri B.S. Suhag, Auth. Rep. (DR)]

CORAM : **Hon'ble Shri D.N. Panda, Judicial Member**
Hon'ble Shri Rakesh Kumar, Technical Member

DATE OF HEARING : 11/11/2008.

FINAL Order No. 894/08-EX Dated : ___________

Per. D.N. Panda :-

Learned Counsel Shri Ravi Raghavan submits that the entire dispute relates to Rs. 27,01,814/- (Rupees Twenty Seven Lakhs One Thousand Eight Hundred and Fourteen only) demanded as duty by the Excise authorities. The break up of the demand is :-

Credit involved (Rs.)	Reason for denial
2,198	Documents (invoices) not submitted to department
19,28,838	Duty paying documents not in favour of appellants
6,14,590	Credit availed on other than triplicate copy of bill of entry
68,880	Cancellation marks in invoice
87,308	Credit taken on original invoice
27,01,814	Total

With the aforesaid breakup he submits that the demand of Rs. 2198/- (Rupees Two Thousand One Hundred Ninety Eight only) sustains for no evidence traceable to adduce.

2. The second category of demand of Rs. 19,28,838/- (Rupees Nineteen Lakhs Twenty Eight Thousand Eight Hundred and Thirty Eight only) relates to duty paying documents not showing name of the appellant. Learned counsel argues that there is no ~~dispute~~ allegation in show cause notice that the goods carried ~~by~~ under such documents were not used for the capital goods. He drew our attention to page 101 of Paper Book to show that the reason of disallowance of Modvat credit shall not sustain. The reason assigned therein is that the goods described and covered by 31 invoices of BHEL were for captive consumption in respect of capital goods of the

Appellant and the duty involved was Rs. 11,15,164/- (Rupees Eleven Lakh Fifteen Thousand One Hundred Sixty Four only). He pleads that the described goods were used only in capital goods of the Appellant and there is no doubt about it. Therefore he submits that if the authorities follow the judgment of Hon'ble High Court of Bombay in the case of **Marmagoa Steel Ltd. vs. Union of India** reported in **2005 (192) E.L.T. 82 (Bom.)**, the appellants shall get relief in view of the ratio that procedural regularities shall not be bottlenecks for rendering substantial Justice. When the goods involved in a document exhibit name of the contractor and such goods are inevitably used for the appellant there shall not be any bar to grant Modvat credit to the appellant. Therefore an opportunity should be given to the appellant in the light of the judgment of the Hon'ble High Court of Bombay to plead and prove intimate connection of documents showing use of modvatable goods for manufacture of capital goods.

3. Learned DR agreed to grant an opportunity for examination of the matter by learned Adjudication Authority to redress grievance of the litigant.

4. So far as the duty demand of Rs. 19,28,838/- (Rupees Nineteen Lakhs Twenty Eight Thousand Eight Hundred and Thirty Eight only) is concerned, we direct the learned assessing authority to consider the plea and evidence of the appellant according to law laid down by the Hon'ble High Court of Bombay and deal the matter accordingly giving reasonable opportunity of hearing to the Appellant.

5. There is a demand of Rs. 6,14,590/- (Rupees Six Lakh Fourteen Thousand Five Hundred and Ninety only). It has been attributed to triplicate copy of the bill of entry relied by Appellant for the claim of Modvat credit. Shri Ravi Raghavan, learned counsel submits that there was no misuse of the relevant triplicate copy furnished. The appellants undertakes if the department finds misuse of such goods or document elsewhere and proves fraudulent claim of Modvat credit elsewhere or more than once they can proceed against the appellant for such misuse. Therefore for the genuine difficulties, the appellant should not suffer.

6. We have heard the learned DR he submits that law does not grant any relief against qua-triplicate copy and department

has no machinery to examine the issue or keep the matter open. Therefore appellant should suffer duty for not providing documents. It was pointed out by the learned counsel with the help of order of the Tribunal in the own case of the Appellant **[Steel Authority of India Ltd. vs. CCE, Raipur – 2008 (225) E.L.T. 319 (Tri. – Del.)]** and pleaded that the appellant should not suffer being a public sector for the non-availability of the triplicate copy of the document. The benefit is available by qua-triplicate. We agree that the department has not made any finding on the discrepancy in the documents but use of the document for relief is only questioned. There is nothing available on record or there is known reason to deny the benefit following the Tribunal's order cited above. We are of firm opinion that procedure should not be bottleneck in absence of any contrary material or evidence against appellant in respect of evidence adduced to claim relief. Accordingly there shall be no demand of Rs. 6,14,590/- (Rupees Six Lakh Fourteen Thousand Five Hundred and Ninety only).

7. The fourth break up of the demand relates to cancellation marks on of invoices. Demand of Rs. 68,880/- (Rupees Sixty Eight Thousand Eight Hundred Eighty only)

was raised on such count. Learned counsel did not press any relief on this demand. Therefore, this demand of Rs. 68,880/- (Rupees Sixty Eight Thousand Eight Hundred Eighty only) sustains.

8. There is a dispute for Rs. 87,308/- (Rupees Eighty Seven Thousand Three Hundred and Eight only) in respect of credit taken on original invoice. Learned counsel submits the documents being mis-placed those were not readily available for authorities to examine. Since, on the quantum of demand of Rs. 19,28,838/- (Rupees Nineteen Lakh Twenty Eight Thousand Eight Hundred Thirty Eight only) it has been proposed by Tribunal to remand, the learned Adjudicating Authority may consider plea and evidence relating to Rs. 87,308/- (Rupees Eighty Seven Thousand Three Hundred and Eight only) while he readjudicates on these two limited issue. Revenue has no grievance for an opportunity to be given to the appellant since the matter only seeks scrutiny of plea and evidence by the learned adjudicating authority.

9. In view of our above observations, we remand the matter partially confirming the duty demand, as aforesaid.

10. So far as the penalty is concerned looking to the facts and circumstances that the appellant is a public sector and there does not appear to have any serious lapse, we do not propose to express any opinion on that levy. In view of the remand, learned adjudicating authority has liberty to consider whether reduction of amount of penalty beyond Rs. 1,00,000/- (Rupees One Lakh only) imposed by the learned adjudicating Appellate authority is possible while readjudicating the issue.

11. It is needless to mention that the matter being very old, the appellants shall appear before the learned assessee authority on 22nd December 2008 and place a copy of this order for fixation of date of hearing. If he makes an application for hearing, the learned Adjudicating authority should do well to proceed with the hearing so that appropriate order may be passed with utmost expedition.

(Dictated and pronounced in open court)

(D.N. Panda)
Judicial Member

(Rakesh Kumar)
Technical Member

PK