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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/6165/2004 - EX[DB] & E/6157/2004 Date 26/02/2009

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

To :
M/S JAGDAMBAY CONCAST PVT.LTD.
C-60 FOCAL POINT EXTENSION JALANDHAR

2. M/S. PUNJAB CASTINGS (P) LTD., G.T. ROAD, JALANDHAR CANTT.

M/S JAGDAMBAY CONCAST PVT.LTD. Appellant
Vs
C.C.E.JALANDHAR Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 159-160/2009-**EX[DB]** dated 17-2-09 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.JALANDHAR
PLOT NO.19,C.R.BUILDING SECTOR 17-C,CHANDIGARH
2. Adv. / Consult SH. S. MALHOTRA, ADV., 13-R, H. C. COLONY NEAR D.A.V. COLLEGE, JALANDHAR
3 C.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), Thyagaraya 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-15
15 Office Copy
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Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI

COURT – III

CENTRAL EXCISE APPEAL NO. 6165 & 6157 OF 2004

[Arising out of Order-in-Appeal No. 421/CE/JAL/2004 dated 28.9.2004 & 469/CE/JAL/2004 dated 30.9.2004 passed by the Commissioner (Appeals) (Jal.), Central Excise, Chandigarh]

For approval and signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)
Hon'ble Mr. P.K. Das, Member (Judicial)

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?	NA
3.	Whether their Lordships wish to see the fair copy of the order?	
4.	Whether order is to be circulated to the Departmental authorities?	Yes.

M/s. Jagdambay Concast Pvt. Ltd.,
M/s. Punjab Castings (P) Ltd., Appellants

Vs.

CCE, Jalandhar Respondent

Appearance:

Shri Sudhir Malhotra, Advocate for the appellant;
Shri C.S. Rajput, Departmental Representative, for the Revenue,

Coram:

Hon'ble Mr. M. Veeraiyan, Member (Technical);
Hon'ble Mr. P.K. Das, Member (Judicial),

Date of hearing/decision: 17th February, 2009

FINAL ORDER NO. 159-160/09-EX **dated** ________

Per P.K. DAS:

Common issue involved in these appeals and, therefore, both are being taken together for disposal.

2. Relevant facts of the case, in brief, are that the appellants are engaged in the manufacture of Non-alloy Steel Ingots falling under Chapter 72 of the Central Excise Tariff 1985. During the period September, 1997 to March, 2000 the appellants were working under Section 3A of the Central Excise Act, 1944 under the Compounded Levy Scheme. It has been alleged that the appellants captively consumed Steel Formers in the induction furnace without payment of duty. The original authority confirmed the demand of duty of Rs. 46,141/- in the case of M/s. Jagdambe Concast Pvt. Ltd. and Rs. 29,324/- in the case M/s. Punjab Castings Pvt. Ltd. and penalty of equal amounts in both the cases. The Commissioner (Appeals) upheld the order of the original authority.

3. Learned Advocate contested the demand of duty on merits as well as on limitation. He submits that "Steel Former" is used in holding the ramming mass lining in Induction Furnaces. It is a capital goods and exempted by notification No. 67/95-CE dated 16.3.95. He also submits

that without prejudice the appellants were under the bona fide belief that Steel Formers are capital goods and covered under notification No. 67/95-CE dated 16.3.95 as amended by notification No. 59/97-CE dated 30.8.97. He also submits that vide Board's circular No. 690/6/2003-CX (F.No. 139/8/2003-CX.4) dated 20.1.2003 it has been clarified that duty will be leviable on steel formers when captively consumed. He relied upon the decision of the Tribunal in the case of Prince Rollings (P) Ltd. vs. CCE, Calicut, reported in 2007 (213) ELT 623 (Tri.-Bang.) and Patwari Steels Pvt. Ltd. vs. CCE, Patna, reported in 2008 (224) ELT 328 (Tri.-Kolkata).

4. Learned SDR reiterates the findings of the Commissioner (Appeals). He submits that the appellants have not filed any declaration and failed to disclose the manufacture and captive consumption of steel formers to the department, therefore, extended period of limitation is invokable. He relied upon the following decisions of the Hon'ble Supreme Court:-

(i) Madras Petro-chem Ltd. vs. CCE, Madras – 1999 (108) ELT 611 (SC);

(ii) CCE, Pune vs. Vora Products - 2008 (221) ELT 321 (SC);

(iii) CCE, Chandigarh vs. Pepsi Foods Ltd. – 2007 (213) ELT 321 (SC)

5. After hearing both the sides and on perusal of the records, we find force in the submission of the learned Advocate as the demand is barred

by limitation. It is seen in the Board's Circular dated 20.1.2003 that doubts had been raised regarding leviability of central excise duty on captive consumption of "Steel Former". It has been clarified that duty is payable on "Steel Former" when captively consumed in induction furnace under the Compounded Levy Scheme during the period 1.9.1997 to 31st March, 2000. The dispute relates as to whether the steel former is input or capital goods. The Board resolved the issue vide circular dated 20.1.2003. So, the contention of the learned Advocate that the appellant acted on a bonafide belief regarding non-levy of duty is justifiable. The case law relied upon by the learned D.R. are not applicable in the present case, where Board circular reveals doubt regarding the leviability of duty. In view of that the impugned order is set aside on limitation. Both the appeals are allowed with consequential relief.

(Dictated & pronounced in the Open Court.)

(M. VEERAIYAN)
MEMBER (TECHNICAL)

(P.K. DAS)
MEMBER (JUDICIAL)

RK