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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/535 /2009 - EX[DB)
E/S/536/2009-EX

Date 30/04/2009

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

To :
M/S BHUSHAN STEELS LTD.
(FORMERLY KNOWN AS BHUSHAN STEEL & STRIPS LTD.) 23, SITE-IV, INDL. AREA, SAHIBABAD,
DISTT. GHAZIABAD
M/S BHUSHAN STEELS LTD.

Appellant

Vs

C.E.E. GHAZIABAD STAY ORAL ORDER NO. 359/09-EX. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 284/2009- **EX[DB]** dated 27-4-09

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. GHAZIABAD
   C.G. O. COMPLEX-II, KAMLA NEHRU NAGAR, GHAZIABAD 201302
2. Adv. / Consult
   MR.RAJESH CHHIBBER & VINOD AGARWAL
   FA/9, NEW KAVI NAGAR, GHAZIABAD
3. C.D.R
4. ~~J.C.D.R.~~
5. Bar association, CESTAT, New Delhi
6. Director Publications, Customs, Excise. I.P. Estate, New Delhi
7. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8. Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
12. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
13. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
14. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15. LAWCRUX Advisors Pvt Ltd. LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
16. Office Copy
17. Guard file
18. HON'BLE PRESIDENT.

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R. K. Puram, New Delhi
COURT-I

Date of hearing/decision: 24.04.2009

Excise Appeal No. 535 of 2009 with Excise Stay No. 536 of 2009
[Arising out of order in appeal No. 287-CE/APPL/GZB/2008 dated 16.12.2008 passed by the Commissioner (Appeals), Central Excise, Ghaziabad]

For approval and signature:

Hon'ble Mr. Justice R.M.S. Khandeparkar, President
Hon'ble Mr. M. Veeraiyan, 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.	NO
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3	Whether Their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

M/s Bhushan Steels Ltd., Appellant

Vs.

CCE, Ghaziabad Respondent

Appearance:

Appeared for the Appellant – Mr. Rajesh Chhibber & Vinod Agarwal Advocates

Appeared for the Respondent – Mr. R.K. Verma, DR

Coram: Hon'ble Mr. Justice R.M.S. Khandeparkar, President
Hon'ble Mr. M. Veeraiyan, Member (Technical)

STAY Oral Order No. 359/09-EX
FINAL ORDER NO 284/09-EX

Per M. Veeraiyan:

After hearing both sides for a while on the stay petition, we felt that the matter could be disposed of on a short point, and accordingly we waive pre-deposit of the dues as per the impugned order and proceed to dispose of the appeal finally.

2. The appellant is a manufacturer of excisable goods. The dispute relates to the period from January 2005 to November 2005. During the said period, they incurred freight for outward transportation involved in supply of the excisable goods to their customers. There are two categories of sales and accordingly two types of invoices are prepared by them in respect of such sales. In the first category of cases, they claimed that invoices were raised on FOR destination basis and the freight was not shown separately in the invoices. In other cases, they have raised invoices wherein the amounts towards freight were separately indicated. It is the submission of the learned Advocate for the appellant that in both the cases ownership of the goods rested with them till the goods were delivered to the customers at the premises of the customers and that the risk like damage, loss of the goods in transit was also ~~was~~ that of the appellant. Under these circumstances, he submits that the conditions in Board's Circular No. 97/B-2007-ST dated 23.8.2007 are satisfied in their case and the transportation involved till delivery of the goods to the customers has to be considered as input service. He also relies on the decision of the Hon'ble High Court of Punjab & Haryana in the case of Ambuja Cements Limited vs. Union of India reported in 2009 (236) ELT 431 (P&H).

3. We find that the original authority has passed the order on 26.10.2007 after issue of the Board Circular dated 23.8.2007. However, the Ld advocate for the appellant submits that the personal hearing was held earlier to the date of issue of the circular and that

they could not draw the attention of the adjudicating authority to the said circular. The application of board's circular and the application of the decision of the High Court of Punjab & Haryana depends on appreciation of relevant facts which is required to be gone into by the original authority. To enable the same, we set aside the order of the Commissioner (Appeals) and the order of the original authority and remand the matter to the original authority to consider all the issues including limitation afresh after granting reasonable opportunity of hearing to both sides.

4. The appeal is allowed by way of remand. Stay petition is also disposed of.

(Justice R.M.S. Khandeparkar)
President

(M. Veeraiyan)
Member (Technical)

/Pant/