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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/241 /2006 - EX[DB] Date 09/09/2009

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

To :
C.C.E. CHANDIGARH
C.R. BUILDING, PLOT NO. 19, SECTOR 17-C,
CHANDIGARH 160017
C.C.E. CHANDIGARH Appellant

Vs

STEEAGE TUBES (P) LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 632/2009- **EX[DB]** dated 07-9-09

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

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
   STEEAGE TUBES (P) LTD.
   MANDI GOBINDGARH
2. Adv. / Consult SH. H.BAJAJ,ADV.,
   A-5,BASEMANT,
   LAJPAT NAGAR-III,N.DELHI-24

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
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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 – 110 066.
Principal Bench, New Delhi

COURT NO. II

DATE OF HEARING : 26/8/09.

Excise Appeal No. 241 of 2006

[Arising out of the Order-in-Appeal No. 387/CE/CHD/2005 dated 27/10/2005 passed by The Commissioner (Appeals), Central Excise, Chandigarh.]

CCE, Chandigarh — Appellant

Versus

M/s Steelage Tubes (P) Ltd. — Respondent

Appearance

Shri Sansar Chand, Authorized Representative (DR) – for the appellant.

Shri Hemant Bajaj, Advocate – for the Respondent.

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

FINAL Order No. 632/09-EX. Dated : ____________

ORDER

Per. D.N. Panda :-

1. Learned DR submits that when the input in question used by Respondent has not suffered compounded levy and invoices issued to it suffered from the declarations required by para 4 of the

Notification No..58/97-CE dated 30th August 1997, the Respondent is not entitled to the Cenvat credit. He also submitted that verification resulted with no payment of duty with the seller manufacturer.

2. Learned counsel Shri Bajaj submits that this respondent is a beneficiary of the compounding levy goods used as input for its factory. The inputs procured by Respondent were subject to compounded levy under Section 3A of Central Excise Act, 1944. Such input are deemed to have suffered duty in terms of para 2 of Notification No. 58/97-CE dated 30th August 1997. When the compounding levy goods are said to have suffered duty, an amount @ 12% of value of input is admissible to the respondent towards Cenvat credit for the quantum of compounded levy input used for manufacture of the output by the respondent.

3. Shri Bajaj further submits that when a respondent purchases compounded levy goods, he is not in a position to know whether seller manufacturer of that goods has paid duty to the treasury. Buyer has no other option than to believe documents and declaration issued by the seller manufacturer. There is nothing obligation under law for the buyer to know or inquire whether inputs he is buying from the manufacturer seller has suffered compounding levy. Therefore, board in terms of para 4 of circular was of view that a mere declaration of the seller manufacturer of the goods shall entitle deemed credit under para 2 of the notification to the buyer of input. Learned counsel relies on the judgment of the Hon'ble High Court of Punjab & Haryana at

Chandigarh in the case of **CCE, Ludhiana vs. Namdev Pipes Ltd.** reported in **2008 (228) E.L.T. 13 (P&H), CCE, Jalandhar vs. M/s Digvijay Steel Industries** vide **C.E.A. No. 8 of 2008 dated 08/07/2008** and **CCE, Jalandhar vs. M/s Mahajan Steel Tubes Ltd.** vide **CM No. 23940-CII of 2007 and CEA No. 110 of 2007 dated 25/2/2008.** He submits that Jurisdictional High Court has resolved the issue holding that if a wrong declaration is submitted by the manufacturer seller that shall not deny input credit in terms of para 2 of the notification. Therefore irrespective of any veracity of declaration, respondent is entitled to the relief.

4. Heard both sides and perused the records.

5. We have gone through various citations made by the learned counsel and also looked into spirit of notification granting relief to the buyer of compounded levy input. There is a deemed provision of discharge of duty liability in terms of para 2 of the Notification to entitle 12% credit to the buyer manufacturer. Of course, this is subject to para 4 of the notification. That para requires that invoice should be followed by declaration as to payment of excise duty by the seller manufacturer. We have also gone through the judgment of Hon'ble High Court of Punjab & Haryana at Chandigarh in the case of **Vikas Pipe vs. CCE, Chandigarh – II** reported in **2003 (158) E.L.T. 680 (P & H).** The Hon'ble High Court in para 3 has held that a buyer is not obliged to lead an evidence in support of his claim of Cenvat credit against compounded levy goods. Following the decision of Hon'ble

High Court of Punjab & Haryana, we consider that the matter has set at rest in absence of orders of higher court against judgment Vikas Pipe vs. CCE, Chandigarh – II (supra). Accordingly revenue appeal is dismissed.

(Dictated and pronounced in open court)

(D.N. Panda)
Judicial Member

(Rakesh Kumar)
Technical Member

PK