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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/225 /2006 - EX[DB]   Date 13/11/2009

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

To :
C.C.E. JAIPUR I
N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME,
JAIPUR 302005.

C.C.E. JAIPUR I   Appellant
Vs
M/S CONTINENTAL ENGINES LTD.   Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 893/ 2009 EX[DB] dated 09-11-09 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
   M/S CONTINENTAL ENGINES LTD.
   SP-312, INDUSTRIEAL AREA,BHIWADI (RAJASTHAN)
2. Adv. / Consult
   MR.BIPIN GARG
   B-1/1289,A-VASANT KUNJ, NEW DELHI
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

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
BENCH-DB

Excise Appeal No.E/225/2006

(Arising out of Order-in-Appeal No.274(MPM)/CE/JPR-1/2005 dated 20.9.05 passed by the Commissioner(Appeals-I), Central Excise, Jaipur)

Date of Hearing/Decision: 04.11.2009

CCE, Jaipur-I — Appellant

Vs.

M/s.Contitental Engines Ltd. — Respondent

Present for the Appellant : Shri S.R.Meena, SDR
Present for the Respondent: Shri Atul Gupta, CS

Coram:Hon'ble Mr.Veeraiyan, Technical Member
Hon'ble Mr.D.N.Panda, Judicial Member

Final **ORDER** 893/09

PER: D.N.PANDA

While learned Adjudicating Authority denied refund claim of Respondent, learned appellate authority below entertained prayer for refund allowing appeal of the Respondent.

2. Both sides agree that clearance of the goods was made by the respondents to a 100% EOU. As a result, the appellant was prevented to recover input credit in the absence of discharge of duty liability. Therefore refund of duty paid for inputs was claimed by the respondents. But that was denied.

3. In absence of any material to support denial, the matter only called for interpretation of law before us. Both sides are firm on their stand pleading denial by one side and claim by the other leaning on order of respective Authorities below. Ld.Counsel presses his claim on the basis of judgement in CCE, Surat vs. Shilpa Copper Wire Industries-2008 (226) ELT (Tri.-Ahmd).

4. We have examined the record. Reading of above judgement throws light that denial of refund would defeat the spirit of cenvat credit principles for the reason that cenvat credit is permitted by law to be set off against ultimate duty liability arising out of goods manufactured using the cenvatable input and cascading effect is avoided. Tribunal's finding in para 2 of the judgement in CCE, Surat vs. Shilpa Copper Wire Industries-2008 (226) ELT (Tri.-Ahmd) exhibits that similarly situated case like that of the present Respondent was before Tribunal. It has come to conclusion in para 5 that denial of refund would be unreasonable.

5. When we look into the decision of Ahmedabad Bench as aforesaid, we are of the view that para 4 of the Tribunal's order in the case cited (supra) having granted similar relief to the assesses of similarly situated case, Revenue's appeal is liable to be dismissed. We order accordingly.

(M.VEERAIYAN)
TECHNICAL MEMBER

(D.N.PANDA)
JUDICIAL MEMBER

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