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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/6174/2004 - EX[DB] Date 17/09/2009

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

To :
C.C.E.CHANDIGARH
PLOT NO 19,SECTOR 17-C,CHANDIGARH

C.C.E.CHANDIGARH Appellant
Vs
M/S TRIVENI CASTINGS PVT.LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No. 687 2009 EX[DB]** dated 02-9-09 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
M/S TRIVENI CASTINGS PVT.LTD.
PLOT NO-51-52,SECTOR-5,PARWANOO,DISTT.SOLAN H.P
2. Adv. / Consult
MR.K.K ANAND
A-5,BASEMENT,LAJPAT NAGAR-III NEW 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
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.II, R.K. PURAM, NEW DELHI-110066.
BENCH-DB

Excise Appeal No.6174 of 2004

(Arsing out of Order-in-Appeal No.640/CE/CHD/2004 dated 14.09.2004 passed by the Commissioner of Central Excise (Appeals), Chandigarh)

Date of Hearing: 02.09.2009
Date of Decision: 02.09.2009

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?	Yes
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

Commissioner of Central Excise, Chandigarh — Appellant

Vs.

M/s.Triveni Castings (P) Ltd. — Respondent

Present for the Appellant: Shri S.Shah, DR
Present for the Respondent: Shri H.Bajaj, Advocate

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

FINAL **ORAL ORDER NO.** 687/09-EX.

PER: M.VEERAIYAN

This is an appeal filed by the department against the order of the Commissioner (Appeals) dated 14.09.2004 by which the order of the original authority dated 6.8.2004 confirming the demand of Rs.11,59,809/- under Rule 57-I of the Rules alongwith interest and imposing penalty of Rs.11,59,809/- was set aside.

2. Heard both sides.

3. The respondent is a Private Limited company, who at their Mandi Gobindgarh address has registered themselves with the Excise authorities as a dealer of excisable goods for the purpose of passing on cenvat credit. They have shown receipt of the goods and also have shown supply to their own factory at Parwanoo in Himachal Pradesh. During investigation it came to light that the respondents, in the capacity as registered dealer, have shown receipt of duty paid goods from one M/s.Ambica Steel Industries, Mandi Gobindgarh. The said M/s.Ambica Steel Industries, Mandi Gobindgarh was found to have no manufacturing facility, no power connection, no stock of finished goods namely washers, no raw material used in the manufacture of items claimed to have been manufactured by them. M/s.Ambica Steel Industries have also shown the purchase of raw materials at the rate of Rs.20 to Rs.30 per kg and shown the sale of their finished products at the rates lower than the raw material cost. The proceedings initiated against them for availing irregular credit on inputs allegedly received by them has been confirmed by the authorities which has been upheld by the Tribunal and later also by the Hon'ble High Court of Punjab and Haryana vide order reported in 2007 (207) ELT 656 (P & H) in the case of Shree Ambica Steel Industries vs. CCE, Chandigarh-II.

4. In the light of the above, a show cause notice was issued to the respondents and the original authority held that the credit taken on the basis of invoices received from M/s.Ambica Steel Industries through their own premises as registered dealer in Mandi Gobindgarh was irregular and accordingly confirmed the demand of duty alongwith interest and imposed penalty as mentioned above. On appeal filed by the party, the Commissioner (Appeals) allowed the appeal.

5. The learned DR submits that the supplier, namely, M/s.Ambica Steel Industries did not have any manufacturing facilities. Therefore, the question of their generating scrap and paying duty on the said scrap and supplying the same to the respondents at Mandi Gobindgarh address and the respondent as dealer transporting the same to the respondents' factory at Parwanoo does not arise. Under the circumstances, the credit availed by them is irregular and the order of the original authority should not have been set aside by the Commissioner (Appeals).

6. The learned Advocate for the respondents submits that the decision taken against the M/s.Ambica Steel Industries about lack of manufacturing facility may not be sufficient reason to deny the credit taken by them. The department has not denied the manufacture and clearance of final products, namely, steel ingots from their Parwanoo factory and that they have indeed received the material from the registered dealer and based on the invoices furnished by the registered dealer have rightly taken the credit. He, therefore, seeks upholding the order of the Commissioner (Appeals).

7. We have carefully considered the submissions from both sides. At the outset it is to be noted that the so-called registered dealer who ~~his~~ is said to be in between the manufacturer M/s.Ambica Steel Industries and the respondents factory M/s.Triveni Castings Pvt.Ltd is none other than the respondents themselves. The claim that M/s.Ambica Steel Industries, who did not have any manufacturing facility supplied scrap arising out of manufacture in the factory is not acceptable. The claim of the respondent on the veracity of the invoices issued by their own office at Mandi Gobindgarh, therefore, has to be taken with caution. When the

allegations have been made that they have taken the credit irregularly inasmuch as the supplier was not capable of manufacturing the goods said to have been supplied by them, the respondents have taken shelter stating that they have received the goods from the registered dealer alongwith the invoices. As they have played dual roles, first as registered dealer and then as a recipient-manufacturer, they were required to prove the receipt of duty paid materials in their dealer's premises and the premises of the manufacturing unit. They have not adduced any evidence regarding the actual receipt of the material by their Mandi Gobindgarh office or for transport of the same to Parwanoo factory and on the duty paid nature of the scrap received by them. Under the circumstances, the order of the original authority in confirming the demand alongwith interest and imposition of penalty should not have been interfered with by the Commissioner (Appeals).

8. In view of the above, we set aside the order of the Commissioner (Appeals) and allow the appeal of the department by restoring the order of the original authority.

9. The appeal is disposed of in the above terms.

(JUSTICE R.M.S.KHANDEPARKAR)
PRESIDENT

(M.VEERAIYAN)
MEMBER (TECHNICAL)

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