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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/953,954&955 /2006 - EX[DB]
E/CO/155,13&24/08

Date 18/12/2009

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

To :
CCE,CHANDIGARH
CR BUILDING, PLOT NO-19, SECTOR
17C, CHANDIGARH
CCE, CHANDIGARH

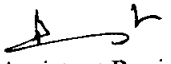
Appellant

Vs
Respondent

M/S N.L.ENGEE P LTD,

I am directed to transmit herewith a certified copy of Final order No. 1386-1388/
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944

2009 EX[DB] dated 11-12-09


Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent

M/S N.L.ENGEE P LTD,

C-114, INDL AREA PHASE VII, MOHALI

2. Adv. / Consult

NONE

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 Publications 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 Kuni, 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 (Harvana)

16 Office Copy

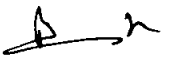
17 Guard file

18. SH. VIJAY KANT AGGARWAL, DIRECTOR

M/S. N.L. ENGINEERS (P) LTD.

19. SH. HARDEEP SINGH,

C-114, INDL AREA, PHASE-VII,
MOHALI


Assistant Registrar
(Excise Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-III

Date of hearing/decision: 9.12.2009

Central Excise Appeals No.953, 954 and 955 of 2006 with Cross-Objections No.155, 13 and 24 of 2008

Arising out of the order in appeal No.61-63/CE/AHD/2006 dated 31.1.2008
passed by the Commissioner (Appeals), Central Excise, Chandigarh.

For Approval and Signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)

Hon'ble Mr. D.N. Panda, Member (Judicial)

1	Whether Press Reporter 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 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

C.C.E., Chandigarh

...

Appellant

Vs.

1. M/s N.L. Engineers (P) Ltd.
2. Shri Vijay Kant Aggarwal, Director
3. Shri Hardeep Singh,
(Authorised Signatory)

....

Respondents

Appearance:

Shri S.R. Meena ,Authorized Departmental Representative (SDR) for the
Revenue and none for the respondents

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

FINAL Oral Order No. 1386-1388/09-2A

Per M. Veeraiyan:

These three appeals by the Department arise out of same order of the
Commissioner (Appeals) No. 61-63/CE/AHD/2006 dated 31.1.2008. Three
cross-objections are connected to these appeals.

2. None appears for the respondents in spite of notice. Heard the learned
SDR and perused records.

3. The respondent's company is a manufacturer of excisable goods. They were availing modvat /Cenvat credit on the inputs namely, zinc, HCL and furnace oil. In addition to manufacturing of excisable goods, the respondents have undertaken the work of galvanisation on job work basis. In the process of galvanisation, they have used some quantities of the above inputs. The original authority held that galvanisation did not amount to manufacture as clarified by the Board's Circular No.19/19/94-CX, dated 9.2.1994 and the inputs have been used for an activity which did not amount to manufacture and the resultant product being non-excisable product, they were not eligible for the credit. Accordingly, he disallowed the credit amounting to Rs.10,23,626/- relating to the period 1.10.98 to 28.2.02. He also imposed penalty of Rs.2 lakhs on the respondent company. In addition to that, he imposed a penalty of Rs.25,000/- on Shri Vijay Kant Aggarwal, Director for the respondent company and Rs.25,000/- on Shri Hardeep Singh, authorised signatory of the respondent company. The Commissioner (Appeals) upheld the disallowance of the credit. However, taking note of the fact that the entire disputed amount except to the tune of Rs.1,37,277/- was paid prior to issue of show cause notice, he set aside the demand for interest and reduced the penalty imposed on the respondent company from Rs.2 lakhs to Rs.1,37,277/-. He also set aside the penalties imposed on the Director and the authorised signatory of the respondent company.

4. Learned SDR submits that as the activity of galvanisation is not an excisable activity and the resultant products namely, galvanised steel products are not excisable commodity, credit attributable to common inputs which have been used in the said activities are not eligible for credit. Therefore, the order of disallowance of the credit and order for recovery of interest and imposition penalties as per the order of the original authority are justified.

5. In the cross-objections, the respondents basically support the order of the Commissioner (Appeals) and seek dismissal of the Department's appeals.

6. We have carefully considered the submissions of the learned SDR and perused the records. We have also gone through the grounds of cross-

objections filed by the respondents. We find that common inputs have been used for manufacture of excisable goods and also in respect of non-manufacturing activity namely, galvanisation which resulted in emergence of non-excisable products. The question of availability of credit on inputs used in non-excisable activity by which non-excisable goods emerge does not arise. Further, the order of the original authority disallowing the credit on this ground stands upheld by the Commissioner (Appeals). Once the credit availed and utilised is held to be irregular, we do not find any justification in Commissioner (Appeals) not confirming the order of the original authority for recovery of interest. We hold that in respect of credit irregularly availed and utilised, interest also will be recoverable.

7. As regards the penalty imposed, the original authority has imposed a penalty of Rs.2 lakhs on the respondent company while confirming a total demand of Rs.10,23,626/- + Rs.33,655/-. No rational has been given to impose Rs.2 lakhs as penalty. The prayer of the Department is to enhance the penalty to Rs.2 lakhs from Rs.1,37,277/-. Under the facts and circumstances of the case, the reduction of penalty by the Commissioner (Appeals) to Rs.1,37,277/- may not be required to be interfered with. Order of the original authority does not specifically indicate any omission or commission on the part of the Director and authorised signatory of the respondent company. Therefore, the order of the Commissioner (Appeals) in setting aside the penalties on Shri Vijay Kant Aggarwal and Shri Hardeep Singh also does not call for any interference.

8. The appeals are disposed of as above. Cross-Objections are also disposed of.

(M. Veeraiyan)
Member (Technical)

(D.N. Panda)
Member (Judicial)

scd/