TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

CUSTOMS. EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
CUSTOMS APPEAL BRANCH

Appeal No. C/102 /2006 - CU[DB]   Date 01/12/2008

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

To :
M/S THAPAR ISPAT LTD
47, PHASE- VIII, FOCAL POINT, LUDHIANA (PB)

M/S THAPAR ISPAT LTD   Appellant
Vs
THE COMMISSIONER OF CUSTOMS AMRITSAR   Respondent

I am directed to transmit herewith a certified copy of Final order No. C/640/08-CUS. DATED 24.11.08 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(Customs Appeal Branch)

Copy to :
1. Respondent
THE COMMISSIONER OF CUSTOMS AMRITSAR
CENTRAL REVENUE BUILDING, MALL ROAD, AMRITSAR
2. Adv. / Consult MR.V K AGGARWAL. ADV.,
B-82, LAJPAT NAGAR, PART-2,
NEW DELHI-110024

3 S.D.R
4 J.C.D.R.
5 Bar association. CESTAT. New Delhi
6 M/s. Deeparchi Publications. M-93. Marg. 46. Saket. New Delhi 110017
7 M/s Centax Publictions (P) Ltd.. 1512-B. Bhishm Pitamah marg. Opp. ICICI Bank of Defence Colony. New - 3
8 Excise & Customs cases. B-37. Sector -1. NOIDA - 201301 Gautam Budh Nagar. (U.P.)
9 Raghuraman's 44-B. Regal Flat.Shipra Suncity. Indirapuram - 201010.Ghaziabad. DT. U.P.
10 Vidheshak publications. I.P.Estate. new Delhi
11 Taxmann Allied Service Pvt Ltd.. 21/35. West Punjabi Bagh. New Delhi - 110026
12 Commercial Laws of India Pvt Ltd Post Bag No. 1033. No.70(Old No. 88). Thyagaraya Road. T. Nagar.Chennai
13 Taxindiaonline.com Pvt.Ltd. B-XI/8183.Vasant Kunj. New Delhi - 110070
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15
15 Office Copy
16 Guard file

Assistant Registrar
(Customs Appeal Branch)

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
R.K. PURAM, W.B. NO.2, PRINCIPAL BENCH
NEW DELHI, COURT NO.I**

Customs Appeal No. 102 of 2006

[Arising out of Order-in-Original No. 34/CUS/2005 dated 5.12.2005 passed by the Commissioner of Customs (Prev.) Amritsar]

Date of Hearing/Decision : 24.11.2008

For approval and signature:

Hon'ble Ms. Jyoti Balasundaram, Vice 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 Thapar Ispat — Appellant

Vs.

CC, Amritsar — Respondent

Appearance:

Mr. V.K. Agrawal, Advocate for the Appellant
Mr. A.K. Madan, DR for the Respondent

CORAM: Ms. Jyoti Balasundaram, Vice President
Mr. M. Veeraiyan, Member [Technical]

Final **Order** No C/640/08

Per M. Veeraiyan:

Heard both sides.

2. The appellants obtained a DEEC licence which entitled them to import duty free re-rollable scrap (in addition to other items) and the appellant imported heavy melting scrap (HMS) and filed bill of entry giving the description of HMS and claimed the benefit of Notification No. 203/92-Cus. dated 19.5.1992 in terms of the DEEC licence and the Department allowed the same. However, by a notice dated 22.8.1995, a demand of Rs. 15,35,392/- was proposed on the ground that in respect of HMS imported by the appellant modvat credit has been taken by the supporting manufacturer of the appellant and was confirmed. On appeal, the Tribunal vide its order dated 22.11.2000 remanded the matter to the original authority with the following observations /directions:-

> "8. In view of the submission of the appellants that they have fulfilled the export obligations albeit beyond the prescribed export obligation period, we are of the view that the interest of justice requires that the case may be re-examined by the Commissioner in the light of the claim of fulfillment of export obligation by the appellants. The issue of availment of modvat credit by the input suppliers so as to dis-entitle the appellants from availment of duty free exemption under Notification No. 203/92-Cus dated 19.5.92 is also to be examined in the light of the submission of the appellants that the taking of modvat by the input suppliers stood cancelled upon payment of duty on the inputs by the appellants. The Commissioner shall verify whether the duty payment has been reflected in the Central Excise records of the supporting manufacturer. In the result, we set aside the impugned order and remand the case for fresh decision by the jurisdictional Commissioner who shall pass fresh orders after extending to the appellants a reasonable opportunity of being heard in person and putting forth their defence. The appeal is thus allowed by remand".

2. In pursuance of the remand order, Commissioner ~~decided~~ passed the impugned order by which he ordered confiscation of re-rollable scrap but allowed the same to be redeemed on payment of a fine of Rs. 3,00,000/-. He also ordered recovery of duty as raised in the show cause notice along with interest and also imposed a penalty of Rs. 2,00,000/- on the appellant.

3. Learned Advocate for the appellant submits that what was imported by them being HMS, the same was not covered under the DEEC licence and their claim for the DEEC benefit under the notification was a mistake and same has also been accepted by the Department. Once they are not

V ' v

covered under DEEC licence, the question of their complying with the conditions under Notification No. 203/92 does not arise. They are willing to pay the duty on HMS as applicable at the time of import and that they are eligible for the concessional rate of duty provided under Notification No.83/90-Cus as amended. He also submits that the eligibility for concessional rate of duty under the above notification was claimed before the authorities even before the order of remand by the Tribunal which was not dealt with in the order. Even the impugned order does not deal with the said issue. Learned Advocate also submits that they are liable to pay the CVD @ Rs.1,000/- PMT as per the Notification No. 44/93-CE dated 28.2.93 and that if the CVD was paid them , the same shall be available as credit to them.

4. Learned DR submits that the appellant having claimed the benefit of Notification No. 203/92, they cannot now take a plea that they need not fulfill the conditions under the said notification. He relies on the decision of the Hon'ble Supreme Court in the case of CC, Calcutta vs. Indian Rayon & Industries Limited reported in 2008 (229) ELT 3 (SC) and particularly draws our attention to paras 4,5 and 13 of the said decision.

5. We have carefully considered the submissions made from both sides. It is not in dispute that what was permitted under the DEEC licence was import of re-rollable scrap and what was imported is HMS. Under these circumstances, it will not be proper to extend the benefit of DEEC benefits for the said goods and also enforce the condition imposed under the concerned notification. Therefore, we find that the request of the learned Advocate for permitting them to pay the applicable duty on the HMS after extending the notifications which were in force merits consideration. However, we find that the issue though has been raised at earlier stages, the Commissioner has not given a finding. Therefore, we deem it proper to set aside the order of the Commissioner and remand the matter to consider

these pleas afresh after giving reasonable opportunity of hearing to the appellant. The plea on admissibility of credit CVD will also be considered by the adjudicating authority at the time of re-adjudication.

6. The decision of the Hon'ble Supreme Court relied upon by the DR is not applicable to the facts of the present case as it is seen that in the said case the only notification which was available to the assessee at the time of import which granted the assessee the right to import the goods was Notification No. 158/95-Cus. However, in this case, admittedly the goods are not covered under DEEC licence and therefore the question of extending the concession under notification No. 203/92 did not arise.

7. The appeal is allowed by way of remand on the above terms.

[Dictated and pronounced in the open Court]

[Jyoti Balasundaram]
Vice President

[M. Veeraiyan]
Member [Technical]

[Pant]