

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

Appeal No. E/1955/2006-1956/2006-SM[BR]

Date 25/01/2008

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

To :  
THE COMMISSIONER OF CENTRAL EXCISE  
JALANDHAR  
JALANDHAR HQR AT CHANDIGARH, PLOT NO. 19,  
SECTOR 17-C, CHANDIGARH

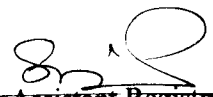
THE COMMISSIONER OF CENTRAL EXCISE  
JALANDHAR

Appellant

M/S GUPTA BROTHERS CONDUIT PIPE  
MANUFACTURING CO (

Vs  
Respondent

I am directed to transmit herewith a certified copy of Final order No. 159-160/2008-SM[BR] dated 17.1.2008  
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944

  
Assistant Registrar  
(SM Appeal Branch)

**Copy to :**

1. Respondent

M/SGUPTA BROTHERS CONDUIT PIPE ,

2, M/S PRINCE AGRO & ALLIED INDUSTRIES  
G. T. ROAD MANDIGOBINDGARH [PUNJAB]

MANUFACTURING CO. [P] LTD, G. T. ROAD  
DINANAGAR DISTT. GURDASPUR [PUNJAB]

2. Adv. / Consult SHRI RUPINDER KUMAR ADV.

CONNAUGHT CIRCUS, JALANDHAR CITY, [P.B.]

3. S.D.R.

~~4. J.C.D.R.~~

5. Bar association, CESTAT, New Delhi

6. M/s. Deeparchi Publications, M-93, marg. 43, saket, New

7. M/s Centax Publications (P) Ltd., 1512-E, Bhishm Pitamah

8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301

9. R.Venkatraman Constt. 44-B, S.Suncity, Ghaziabad -

10. Nidheshak publications, I.P.Estate, new Delhi

11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh,

12. Co, Law Institution

13. TAX INDIA, B-XI/8183, Vasant Kunj, New Delhi - 110070

14. Office Copy

15. Guard file

  
Assistant Registrar  
(SM Appeal Branch)

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**  
**West Block No.2, R.K.Puram, New Delhi-110066.**  
**Principal Bench, New Delhi.**

**Excise Appeal No.1955-56 of 2006-SM**

**(Arising out of Order-in-Appeal No.95-96/CE/Jal/2006 dt.28.2.06  
passed by the Commissioner(Appeals), Jalandhar)**

For approval and signature:

Hon'ble Mr. T.K.JAYARAMAN, MEMBER TECHNICAL

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1. Whether Press Reporters may be allowed to see:  
the Order for publication as per Rule 27 of the  
CESTAT (Procedure) Rules, 1982?
  2. Whether it would be released under Rule 27 of :  
the CESTAT (Procedure) Rules, 1982 for  
publication in any authoritative report or not?
  3. Whether their Lordships wish to see the fair :  
copy of the order?
  4. Whether order is to be circulated to the :  
Department Authorities:

} Yes.

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CCE, Jalandhar

Appellant

Versus

M/s. Gupta Brothers Conduit Pipe  
Manufacturing Co.(P) Ltd.

2. M/s. Prince Agro & Allied Inds.

Respondent

Appearance

Shri B.S.Suhag, Authorised Representative(DR) For Appellant

None/Shri Rupinder Kumar, Adv. For Respondent

Coram: Hon'ble Mr.T.K.JAYARAMAN, MEMBER TECHNICAL

*final* Date of decision: 17.1.08  
Order No. 159-160/18-8m(BR)

Per T.K.Jayaraman:

Revenue has filed these appeals against order-in-appeal No.95-96/CE/JAL/06 DT.28.2.06 passed by the Commissioner(Appeals), Chandigarh.

2. The main ground of the revenue for appealing against the impugned order is that there is no evidence of payment of duty on the goods supplied by Prince Agro & Allied Inds. and Gupta Brothers Conduit Pipe Manufacturing Co.(P) Ltd. Once there is no evidence for payment of duty, the cenvat credit cannot be taken even though it is deemed Cenvat credit.
3. Learned Authorised Representative argued that the conditions stipulated in the relevant notification No.58/97 dt.30.8.97 have not been fulfilled for availing the deemed Cenvat credit. He stated that the recipient should have ensured that the appropriate duty was paid by the manufacturer.
4. Ld. Advocate who appeared on behalf of the respondent No.2 namely Prince Agro & Allied Inds. states that it is not correct that respondent No.2 did not discharge any duty liability. Under the scheme of compounded levy, the annual capacity production is fixed by the Commissioner(Appeals). Moreover, the duty is discharged on fortnightly basis. Therefore, situation arise when the goods are cleared and duty would be paid after a lapse of few days in view of the system of fortnightly

payment. In all these cases the clearance is done only in terms of Rule 96ZP3 and once there is an endorsement in the invoice that the goods are cleared under Rule 96ZP that would be sufficient for the purpose of taking Cenvat credit. On the other hand Ld. DR stated that the sample endorsement showing goods are cleared under Rule 96ZP is not at all sufficient because there is no declaration by the manufacturer to the effect that appropriate duty had been discharged. In the absence of evidence he said Modvat credit cannot be taken and both the supplier and respondent are liable for penalty. Ld. Advocate for the respondent took me through both the order-in-original and also the order-in-appeal. The Commissioner(Appeals) has relied on the decision of the Tribunal in the case of L.D. Steel Corpn. vs CCE, Chandigarh reported in 2005(69)RLT.220 wherein it is observed that the declaration <sup>that were</sup> goods cleared under Rule 96ZP(3) is sufficient for taking deemed credit. He also relied on the decision of the Hon'ble High Court of Punjab & Haryana in the case of Vikas Pipes vs CCE, Chandigarh reported in 2003(158)ELT.680(P&H) wherein it was held that where the invoice contained the declaration by manufacturer of inputs that inputs have suffered excise duty and on verification it was found that the supplier had not discharged the duty liability fixed under Section 3A, deemed credit cannot be denied as there is no requirement in the notification for production of evidence of payment of duty.

5. On a careful consideration of the issue, I find that in matters of availing deemed credit strictly speaking duty paying document is not insisted upon. Only for that reason, the nomenclature "deemed credit" has been used. If there is evident that goods had been cleared under the relevant Rule 96ZP, it should be deemed that the material received has been duty paid and credit should be allowed on the basis of the notification. If investigation revealed that goods have been supplied without payment of duty, it is for the revenue to go after the supplier and recover the duty. For this reason, respondent should not suffer. In my view, it is precisely for this reason that the Hon'ble Punjab & Haryana High Court has ruled that where on verification, it is found that duty has not been paid by the supplier, deemed credit could not be denied. My attention was also invited by the Ld. Advocate that there was some dispute regarding the fixation of ACP. These proceedings are still pending before the Tribunal. In these circumstances, imposition of penalties is also not warranted. In respect of Invoice No.287 even though the Commissioner has held that the credit taken is irregular because the invoice contained the declaration "duty liability to be discharged" under Rule 96ZP(3), the same has not been considered as sufficient declaration. However, on ground of time bar holding that there is no ground for invocation of the longer period, he has allowed the appeal of respondent No.I(Gupta Brothers). He has recorded that the respondent had placed on record photo copies of the letters submitted to the Supdt. of Central Excise, Gurdaspur. I

find that the decision of the Commissioner(Appeals) in respect of particular invoice is illegal and proper. I do not find any ground to interfere with the same.

6. In view of the above, I do not find any merit in the revenue's appeals, the same are dismissed.

Order dictated in the open Court.

(T.K.Jayaraman)  
Member Technical

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