

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/1824/2007-SM[BR]

Date 31/01/2008

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

To :
NEEL METAL PRODUCTS LTD.
SECTOR 36, MOHAMMADPUR, JHARSA, GURGAON

NEEL METAL PRODUCTS LTD.

C.C.E. DELHI III

Appellant
Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No. 207 /2008-SM[BR] dated 21.1.2008 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944


Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent

C.C.E. DELHI III

UDYOG MINAR, UDYOG VIHAR, VANIJYA NIKUNJ,
PHASE V, GURGAON - 122016 (HARYANA)

2. Adv. / Consult

MR.S. K. PAHWA

MARWAH & PAHWA, 45, ARADHANA SECTOR 13, R. K. PURAM, NEW DELHI-110066.

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**

COURT -II

**CENTRAL EXCISE APPEAL No. 1824
OF 2007-SM**

[Arising out of Order-in-Appeal No. 246/SSS/GGN/2007 dated 25.04.2007 passed by the Commissioner (Appeals), Central Excise, Delhi-III, Gurgaon]

For approval and signature:

Hon'ble Mr. S.S. Kang, Vice President

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 Departmental authorities?	

M/s. Neel Metal Products Ltd.

Appellants

Vs.

CCE, Delhi-III, Gurgaon

Respondent

Appearance:

Shri S.K. Pahwa, Advocate for the appellants,

Ms. Archana Pandey Mittal, Jt. CDR, for the respondent,

Coram:

Hon'ble Mr. S.S. Kang, Vice President

Date of Hearing: 21.1.2008

FINAL ORDER NO. 207/08 JM (BR) dated 21/1/08

Per S.S. Kang:

Heard both sides.

2. The appellants filed this appeal against the impugned order whereby credit was denied in respect of 2 invoices dated 28.2.2004.
3. The appellants are engaged in the manufacture of excisable goods and working under Cenvat Credit Scheme. The appellants received inputs from the manufacturer under invoice dated 28.2.2004 showing payment of duty @ 16%. The case of the Revenue is that Notification No. 16/04 dated 28.2.2004 was issued reducing the duty from 16% to 8% on the inputs received by the appellants. The case of the Revenue is that the manufacturer has paid the excise duty to pass on the excess credit. The contention of the appellants is that notification was issued on 28.8.94 reducing the duty on inputs. However, manufacturers has cleared the goods on the same day on payment of duty @ 16% and the appellants availed the credit of the same duty. The contention is that the assessment cannot be reopened at the respondent's end as the Revenue has accepted higher duty paid

by the manufacturer. The appellants relied upon the decision of the Tribunal in the case of Indian Oil Corporation Ltd. vs. CCE, Guntur, reported in 2006 (206) ELT 533 (Tri.-Bang.). The Tribunal in the said decision held that credit rules are in respect of duty paid and not duty leviable. So long as the duty paying documents indicate the duty actually paid, there cannot be any objection in availing the credit.

4. In the present case I find that the duty was reduced on the day when the invoices were issued. It may be a co-incidence, as the duty has been paid at 16% and the appellants availed credit of the same duty. Therefore, denial of full credit to appellants being the recipient of the goods is not justifiable. The appellants are entitled for credit. In view of the above position impugned order is set aside and the appeals are allowed.

(Dictated & pronounced in the Open Court.)

(S.S. KANG)
VICE PRESIDENT

Dated 23rd January, 2008

RK