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

C/S/2850/07-SM(BR)

Appeal No. C/762 /2007-SM[BR] Date 05/02/2008

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

To :
M/S SHIVA ISPAT UDYOG
DHARAM MILLS ROAD, SIRHIND SIDE, MANDI GOBINDGARH

M/S SHIVA ISPAT UDYOG Appellant
Vs
C.C. (PREVENTIVE) AMRITSAR Respondent

I am directed to transmit herewith a certified copy of Final order No. 254/2008-SM[BR] dated 25.1.2008 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

d- 5.0. 8/2/08

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   C.C. (PREVENTIVE) AMRITSAR
   CUSTOM HOUSE, CENTRAL REVENUE BUILDING,
   THE MALL, AMRITSAR 143001.
2. Adv. / Consult
   MR.S.L. CHOPRA & RAVI CHOPRA
   181, INDL. AREA-A, LUDHIANA
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 Publictions (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

C/S/2850/07 – SM with.

CUSTOMS APPEAL No. 762 OF 2007-SM

[Arising out of Order-in-Appeal No. 127/CUS/APPL/LDH/2007 dated 11.10.2007 passed by the Commissioner (Appeals), Central Excise, Jalandhar, Chandigarh]

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. Shiva Ispat Udyog — Appellants

Vs.

CC(Preventive), Amritsar — Respondent

Appearance:
Shri Ravi Chopra, Advocate for the appellants,
Shri B.S. Suhag, DR, for the respondent,

Coram:

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

Date of Hearing: 25.1.2008

Stay Order No. 82/08-SM(BR)

FINAL ORDER NO. 254/08-SM(BR) dated 25/1/08

Per S.S. Kang:

Heard both sides.

2. Applicants filed this application for waiver of pre-deposit of duty of Rs. 1,76,969/- and personal penalty of Rs. 18,000/-. Demand of Customs duty was confirmed on the ground that the goods imported at concessional rate of duty on the condition that the same be used for melting purpose but the applicant failed to submit necessary end-use certificate. Contention of the applicant is that end-use certificate dated 21.9.2005 was produced before the Commissioner (Appeals) and in this certificate the Asst. Commissioner certified that M/s. Kamper Concast Ltd. have consumed the quantity of imported M.S. scrap. Contention is also that the appellants sold the imported scrap to M/s. Kamper Concast Ltd. under invoices in which Bill of Entry was mentioned. Contention is that the subsequent to passing of the impugned order the appellants also submitted that end-use certificate was issued by the Asst. Commissioner of Customs. In these circumstances, contention is that demand is not sustainable.

3. Contention of Revenue is that the appellants had not produced end-use certificate before the adjudicating authority, and it was only

produced at appellate stage and on its verification it was found that the same has not been found with the jurisdictional authorities.

4. I find that scrap was imported on concessional rate of duty on the condition that the same will be used for melting purpose. Now the appellants have submitted the necessary end-use certificate. Invoices under which scrap was sold to M/s. Kamper Concast Ltd. contains the Bill of Entry number under which scrap was imported and sold to Kamper Concast Ltd., and the Asst. Commissioner has certified that the said scrap have been used by M/s. Kamper Concast Ltd. for melting purpose. In these circumstances I find that the matter requires to be reconsidered by the jurisdictional authorities. Therefore, condition of pre-deposit of duty and penalty is waived and the matter is remanded to the adjudication for reconsideration and to decide after affording reasonable opportunity of personal hearing to the appellants. Appeal is allowed by way of remand.

(Dictated & pronounced in the Open Court.)

(S.S. KANG)
VICE PRESIDENT

Dated 29th January, 2008

RK