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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

Appeal No. E/977 -978 /2006-SM[BR] Date 20/03/2008

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

To :
CCE,INDORE
P.B.NO-10,MANIK BAGH PLACE INDORE(MP)

CCE,INDORE Appellant
Vs
M/S DELUXE ALLOYS P LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 449 -450 /2008 –SM[BR] dated 12.2.2008

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
(1-2) M/S DELUXE ALLOYS P LTD.
104,INDL AREA BANMORE MORENA.
2. Adv. / Consult SHRI. V.K.AGRAWAL ADV,
B-82, LAJPAT NAGAR PART-II
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. 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

& 978

EXCISE APPEAL NO. 977 OF 2006-SM

[Arising out of Order-in-Appeal No. IND-I/521 & 522/2005 dated 30.12.2005 passed by the Commissioner (Appeals-i), Customs & Central Excise, iNDORE]

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?	

C&CE, Indore Appellant

Vs.

M/s. Deluxe Alloys (P) Ltd., Respondents

Appearance:

Shri S. Gautam, JDR for the Revenue,
Shri V.K. Agrawal, Advocate for the respondent

Coram:

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

Date of Hearing: 12th February, 2008

FINAL ORDER NO. 449-450/08 SM/BR dated 13/2/08

Per S.S. Kang:

Heard both sides.

2. Revenue filed these appeals against the impugned order whereby demand of Rs. 2,11,600/- and penalty of equal amount on the respondent company and personal penalty on Managing Director were set aside. Contention of Revenue is that as per oral evidence inputs were received in the factory in the month of April, 1999 and the same were not entered in statutory record and were used in the manufacture of goods which were cleared without payment of duty. Contention of Revenue is that, as there was statement of one Shri Bibhuti Bhusan Gupta and Shri Narmada Prasad that the inputs were received by the respondent in the month of April, 1999; contention is that in view of this evidence setting aside of demand is not sustainable.

3. Contention of the respondents is that there is specific finding of fact in the impugned order that 8 invoices under which inputs were received, and credit was availed in the month of May, 99 and inputs used in the manufacture of final products were cleared on payment of duty. Contention is also that the credit was allowed in respect of the

same 8 invoices which was not disputed. This finding of fact was in respect of the same invoices on which credit has been taken in the month of May, 1999 is not challenged in the present appeal.

4. In respect of penalty imposed on Managing Director contention is that there is no allegation regarding omission or commission with intention to evade payment of duty on the part of the Managing Director. Therefore, personal penalty imposed on the Managing Director was rightly set aside.

5. I find that case of the Revenue is that the respondents received the inputs under the cover of 8 invoices which were not entered in statutory record and used in the manufacture of final product were cleared without payment of duty. As per Revenue inputs which were received in the month of April, 1999. I find that the credit in respect of the same 8 invoices was taken by the respondents in May, 1999 and the same was allowed and not under challenge in the present proceedings. It is not the case of the Revenue that inputs were received twice under the same invoices. Further, I find that cross examination of witnesses on the statements of which Revenue is relying was not allowed. In the absence of any other evidence and in view of the fact that credit was allowed on the basis of same invoices which were in dispute in the month of May, 1999. I find no infirmity in the impugned order whereby demand and penalty is set aside.

6. In respect of penalty on the Director, I find that in the present appeal there is no averment regarding omission or commission with intent to evade payment of duty on the part of the Director, therefore, I find no merit in the appeal. Hence, both the appeals are rejected.

(Dictated & pronounced in the Open Court.)

(S.S. KANG)
VICE PRESIDENT

Dated 13th February, 2008

RK