

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/1745/2006-SM[BR]

Date 04/04/2008

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

To :
CCE,LUDHIANA
CRB RISHI NAGAR,LDH.
CCE,LUDHIANA

Appellant
Vs
Respondent

M/S JAI MATA ALLOYS P LTD.

I am directed to transmit herewith a certified copy of Final order No. 552 /2008 -SM[BR] dated 2.1.2008
passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944


Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent

M/S JAI MATA ALLOYS P LTD.

F-2,INDL ESTATE, MALERKOTLA, DISTT SANGRUR

2. Adv. / Consult SHRI. SIDHARTHA SEN ADV.

M/S RESPONDENT;-----

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 AND SERVICE TAX APPELLATE
 TRIBUNAL, R.K. PURAM, W.B. NO.2, PRINCIPAL BENCH
 NEW DELHI, COURT NO. III

Excise Appeal No. 1745 of 2006 -SM (BR)

[Arising out of order in appeal No. 140/CE/CHD/2006 dated 27.02.2006
 passed by the Commissioner (Appeals), Central Excise, Chandigarh]

Date of Hearing/ Decision: 02.01.2008

For approval and signature:

Hon'ble Mr. P.K. Das, Member (Judicial)

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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. | : | } Yes |
| 2. Whether it should 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? | : | |
-

CCE, Ludhiana Appellant
 [Rep. by Mr. S.L. Meena, Authorised Representative (DR) for the
Appellant]

Vs.

M/s Jai Mata Alloys (P) Ltd., Respondent
 [Rep. by Mr. Sidhartha Sen, Advocate for the Respondent]

CORAM: Mr. P.K. Das, Member (Judicial)

Final ORDER / 552/08 SM (BR)

Per P.K. Das:

Revenue filed this appeal against the Order-in-Appeal No.
 140/CE/CHD/06 dated 27.2.2006 passed by the Commissioner (Appeals).

2. The relevant facts of the case, in brief, are that the Respondents are engaged in the manufacture of Cylinder Liners and other Engine parts classifiable under heading No. 8409 of the Schedule to the Central Excise Tariff Act, 1985. The Respondent cleared the goods on payment of concessional rate of duty under small scale exemption notification, which were returned by the buyer as defective goods on payment of higher rate of duty. The Respondent availed the credit of the whole duty paid by the buyer under Rule 16 of Central Excise Rules, 2000. The adjudicating authority denied the credit availed by the Respondent on the ground that the Respondents are entitled to avail the credit which were paid by them at the time of removal of the goods from their factory and imposed penalty. The Commissioner (Appeals) set-aside the adjudication order. Hence, the Revenue filed this appeal before the Tribunal.

3. Learned DR on behalf of the Revenue submits that in terms of Rule 3(4) of CENVAT Credit Rules 2002/2004, the buyer was required to pay the duty equal to the credit availed on such input/ capital goods. He submits that in terms of Rule 16 of the Central Excise Rules, the assessee is entitled to take credit of duty on goods, which they paid at the time of removal of the goods from their factory.

4. Learned Advocate on behalf of the Respondent reiterates the finding of the Commissioner (Appeals). He submits that the Respondent availed credit on the basis of the invoice issued by the supplier under the Cenvat Credit Rule. He relied upon the decisions of the Hon'ble Punjab and Haryana High Court as under:-

- (i) CCE, Ludhiana vs. Perfect Synthetics
2006 (206) ELT 71 (P&H)

- (ii) CCE, Chandigarh-I vs. Swaraj Automotives Ltd.,
2002 (139) ELT 504 (P&H).

5. After hearing both the sides and on perusal of the records, it is seen that the Respondent received the duty paid goods returned back to their factory for being re-made, refined, reconditioned or for any other reason. They availed the credit of the duty paid by the buyer on such return goods in terms of Rule 16 of Central Excise Rules, 2002. For the purpose of proper appreciation, the relevant portion of sub-rule (1) of Rule 16 of Central Excise Rules 2002 is reproduced below:-

“(1) Where any goods on which duty had been paid at the time of removal thereof are brought to any factory for being re-made, refined, re-conditioned or for any other reason, the assessee shall state the particulars of such receipt in his records and shall be entitled to take CENVAT credit of the duty paid as if such goods are received as inputs under the CENVAT Credit Rules, 2002 and utilize this credit according to the said rules”. [emphasis supplied]

6. Rule 16(1) of the said Rules provides that the assessee shall be entitled to take cenvat credit of the duty paid as if such goods received as inputs under the CENVAT Credit Rules, 2002. In the present case, it is seen that the Respondent availed the credit of the duty paid by the supplier in their central excise invoice which specified under Rule 9 of the Cenvat Credit Rules. The main contention of the learned DR that the supplier paid the excess duty in violation of Rule 3(4) of CENVAT Credit Rules as applicable during the material period. Rule 3(4) of CENVAT Credit Rules, 2002 provides that when inputs or capital goods, on which CENVAT credit has been taken are removed as such from the factory, the manufacturer of the final product shall pay an amount equal to the credit in respect of such inputs or capital goods. I find that the Respondent availed credit in pursuance of Rule 16(1) of Central Excise Rules, which

provides that the duty paid returned goods would be treated as inputs under CENVAT Credit Rules. Rule 9 of CENVAT Credit Rules provides that the CENVAT Credit shall be taken by the manufacturer on the basis of the documents as specified therein. There is no dispute that the Respondent availed on the basis of document as specified in Rule 9 of CENVAT Credit Rules. So, there is no scope to deny such credit. Hon'ble Punjab & Haryana High Court in the case of Perfect Synthetics (supra) held that the credit availed by assessee on the strength of invoice issued by supplier cannot be denied. The relevant portion of the said decision is reproduced below:-

"4. From the above, it is clear that the calculation of Excise duty at the time of sale by M/s Deviyani Tex. Chem. Pvt. Ltd., was duly accepted by the department without any objection. The assessee had availed credit in accordance with law on the strength of invoice issued by the said party vide which machinery was purchased. In such circumstances, the Tribunal has rightly observed that the assessee could not be prevented from taking credit on the ground that the duty paid by the supplier was excessive".

7. In the present case, I find that the supplier paid the higher duty which were duly received by the department and the Respondent availed credit on the basis of the invoice issued by the supplier. The Hon'ble Punjab & Haryana High Court also in the case of Swaraj Automotives Ltd., (supra) held that Revenue is not suffered any loss, modvat credit having been taken only on duty paid by the assessee. In view of the above, I do not find any reason to interfere the order of the Commissioner (Appeals). Accordingly, appeal filed by the Revenue is rejected.

(Order dictated and pronounced in the open Court)

(P.K. Das)
Member (Judicial)

[Pant]