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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/3064/2006 – SM[BR] Date 12/11/2008

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

To :
M/S STAINLESS INDIA LTD.
C-237,MIA,BASNI PHASE-II,JODHPUR(RAJ)

M/S STAINLESS INDIA LTD. Appellant
Vs
C.C.E. JAIPUR II Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1447 / 2008- **SM[BR]** dated 8.10.2008 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. JAIPUR II
N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.
2. Adv. / Consult
MR.OM P.AGARWAL & CO.
56, SECTION 7, N.P.H ROAD, JODHPUR(RAJ)
3 S.D.R
~~4 J.C.D.R.~~
5 Bar association. CESTAT. New Delhi
6 M/s. Deeparchi Publications. M-93. Marg. 46. Saket. New Delhi 110017
7 M/s Centax Publictions (P) Ltd.. 1512-B. Bhishm Pitamah marg. Opp. ICICI Bank of Defence Colony. New - 3
8 Excise & Customs cases. B-37. Sector -1. NOIDA - 201301 Gautam Budh Nagar. (U.P.)
9 Raghuraman's 44-B. Regal Flat.Shipra Suncity. Indirapuram - 201010.Ghaziabad. DT. U.P.
10 Nidheshak publications. I.P.Estate. new Delhi
11 Taxmann Allied Service Pvt Ltd.. 21/35. West Punjabi Bagh. New Delhi - 110026
12 Commercial Laws of India Pvt Ltd Post Bag No. 1033. No.70(Old No. 88). Thyagaraya Road. T. Nagar.Chennai
13 Taxindiaonline.com Pvt.Ltd. B-XI/8183.Vasant Kunj. New Delhi - 110070
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-1
15 Office Copy
16 Guard file

Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO.II

E/Appeal No.3064/2006 -SM

(Arising out of order in appeal No.424/HKS/CE/JPR.II/06 dated 10.7.06 passed by the Commissioner of Central Excise (Appeals), Jaipur)

For approval and signature:

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

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 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?

NA.

Yes

M/s Stainless India Ltd — Appellant (Rep. by Shri O.P. Agarwal, C.A)

Vs

CCE, Jaipur-II — Respondent (Rep. by Shri S. Gautam, DR)

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

Date of Hearing: 8.10.08

Final Order No. 1447 /2008-SM(BR)

Per P.K. Das:

The Appellant filed this appeal against denial of Cenvat credit on SS scrap. It has been alleged that the SS scrap is classifiable under sub heading 7204.21 attracting nil rate of duty. The amount paid by the supplier on the exempted goods cannot be treated as duty. The Adjudicating Authority confirmed the demand of duty and imposed penalty. The Commissioner (Appeals) upheld the adjudication order.

2. After hearing both the sides and on perusal of the record, I find that there is no dispute that the appellant availed credit on the basis of proper duty paying documents. The inputs are used in the manufacture of final product and duly recorded in their statutory record. The Hon'ble Madras High Court in the case of CCE Chennai Vs M/s SRF Limited reported in 2006 (202) ELT 753 (Mad-HC) held that if duty is paid on exempted goods, credit cannot be denied. The Hon'ble Gujarat High Court in the case of CCE Vs. Jyoti Ltd reported in 2008 (223) ELT 171(Guj) rejected the appeal filed by the Revenue on the question whether the amount paid in excess by the supplier which is to be treated as deposit can be allowed as modvat credit to the recipient unit especially when the Modvat Credit Rules permit to avail the credit only on Excise duty paid by the supplier. The finding of the Hon'ble Gujarat High Court is reproduced below:-

"*The goods received by the assessee from the said supplier were accompanied by duty paid documents and on the basis of the same the assessee had availed of Modvat credit. The Tribunal has recorded that the assessment of the assessee cannot be disturbed without, in the first instance, disturbing the assessment of the supplier. As the facts reveal, it is not even the department's case that the assessee has not received the goods accompanied by the duty paid documents, or that the assessee had availed of credit higher than the duty actually paid as reflected by the duty paying document. In these circumstances, there is no infirmity in the impugned order of the Tribunal. No substantial question of law arises. The appeal is, accordingly, dismissed.*"

3. In view of the decision of the Hon'ble High Court, I find that in the present case, the appellant availed credit on the basis of duty paying documents and there is no proceedings initiated against the supplier of inputs. So, there is no reason to deny the credit. Accordingly, the impugned order is set aside. The appeal is allowed with consequential relief.

(Order dictated and pronounced in the open Court).

(P.K. Das)
Member(Judicial)

MPS*