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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/2044/2008 – SM[BR] with E/Stay/2004/2008

Date 17/11/2008

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

To :
M/S AVON ISPAT & POWER LTD.,
(FORMERLY KNOWN AS AVERY CYCLES INDUSTRIES LTD.)., G.T.ROAD, DHANDARI KALAN, LUDHIANA (PB)
M/S AVON ISPAT & POWER LTD.,

Appellant
Vs
C.C.E. LUDHIANA
Respondent

I am directed to transmit herewith a certified copy of **Final order No.**1458 /2008-SM[BR] S/ 631 /2008 dated 6.11.2008 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. LUDHIANA
   CENTRAL EXCISE HOUSE, 'F' BLOCK, RISHI NAGAR, LUDHIANA 141001 (PUNJAB)
2. Adv. / Consult
   MR.G.S.BHANGOO
   631 (FF), SECTOR 11B, CHANDIGARH
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)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, R.K. PURAM, W.B. NO.2, PRINCIPAL BENCH NEW DELHI, COURT NO.I

Excise Appeal No. 2044 of 2008-SM with Excise Stay No. 2004 of 2008

[Arising out of Order-in-Appeal No. 179/CE/LDH/2008 dated 30.6.2008 passed by the Commissioner (Appeals), Central Excise, Chandigarh]

Date of Hearing/Decision : 06.11.2008

For approval and signature:

Hon'ble Ms. Jyoti Balasundaram, 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.	:	Yes
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:	No
3. Whether Their Lordships wish to see the fair copy of the Order?	:	Seen
4. Whether Order is to be circulated to the Departmental authorities?	:	Yes

M/s Avon Ispat & Power Limited — Appellant

Vs.

CCE, Ludhiana — Respondent

Appearance:

Mr. Vikrant Kackria, Advocate for the Appellant
Mr. R.K. Saini, Authorized Representative for the Respondent

CORAM: Ms. Jyoti Balasundaram, Vice President

Stay order No. 631/08-SM (BR)

Final **Order** No. 1458/08-Sm (DR)

Per Jyoti Balasundaram:

For reasons recorded below, I waive pre-deposit of service tax of Rs.98,258/- confirmed on the ground that the assessee were not eligible to cenvat credit on outward freight as they had not substantiated their plea that the freight was on FOR basis and proceed to dispose of the appeal at this stage.

2. Appellants submit that they are now in a position to furnish documents showing that the freight was on FOR basis and pray that an opportunity may be given to produce all such documents before the lower authorities who have already held that if the freight is on FOR basis, credit would be admissible. Interest of justice requires that the case be remitted to the adjudicating authority for fresh decision in the light of the documentary evidence produced by the appellants to support their claim that the freight was charged on FOR basis. The impugned order is, therefore, set aside and the case is remanded to the adjudicating authority who shall pass fresh orders after extending reasonable opportunity to the appellants of being heard in their defence.

3. The appeal is thus allowed by way of remand.

[Dictated and pronounced in the open Court]

[Jyoti Balasundaram]
Vice President

[Pant]