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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/254 -255 / 2007-SM[BR] Date 17/11/2008

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

To :
C.C.E. LUDHIANA
CENTRAL EXCISE HOUSE, 'F'BLOCK, RISHI NAGAR,
LUDHIANA(PUNJAB)
141001

C.C.E. LUDHIANA Appellant
Vs
M/S SHAM UDYOG LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1463 -1464 /2008 - **SM[BR]** dated 14.1008 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 SHAM UDYOG LTD.
VILL : GOUNSPURA, LUDHIANA ROAD, MALERKOTLA, DISTT. SANGRUR (PUNJAB)
2. Adv. / Consult SHRI BIPIN GARA ADV.
B-1/1289-A, VASANT KUNJ NEW DELHI-70

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
17, M/S MALERKOTLA STEEL& ALLOYS PVT.LTD.
BARNALA ROAD MALERKOTLA, DISTT SANGRUR[P.B]

Assistant Registrar
(SM Appeal Branch)

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

E/Appeal No.254 & 255/2007 -SM

(Arising out of order in appeal No.52-53/CE/Appl/Dlh/06 dated 29.9.06 passed by the Commissioner of Central Excise (Appeals), Ludhiana)

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?

No

Yes

CCE, Ludhiana — Appellant
(Rep. by Shri Sansar Chand, DR)

Vs

1. M/s Sham Udyog Ltd
2. M/s Malerkotla Steel & Alloys Pvt Ltd

Respondent
(Rep. by Shri Bipin Garg, Advocate)

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

Date of Hearing: 14.10.08

Final Order No. 1463-1464 /2008-SM(BR)

Per P.K. Das:

Common issue is involved in both the appeals and therefore, these are being taken up together for disposal.

2. The relevant facts of the case, in brief, are that the show cause notices were issued proposing to deny the cenvat credit of Rs. 26,768/- and Rs. 36,545/- against the respondent No.1 and 2 respectively. It has been alleged that the octroi receipts recovered from the Traders (i.e. supplier) indicated that the same quantity has been delivered to same vehicles to some other parties. Therefore, it has been alleged that the respondent had not received the materials and availed the credit on the basis of paper. The adjudicating authority dropped the proceedings against the respodents. Revenue filed appeals before the Commissioner (Appeals) whereby the orders of the adjudicating authority were upheld. Hence the Revenue filed these appeals.

3. After hearing both the sides and on perusal of the record, it is seen that the main contention of the learned DR is that the representative of the traders failed to explain the reasons for octroi receipts indicating the delivery of the goods to other parties who had confirmed the receipt of the goods. He further submits that both the authorities below failed to consider the veracity of the octori receipts and erroneously proceeded on the basis of record maintained by the respondents.

4. The learned Advocate on behalf of the respondent reiterates the findings of the Commissioner (Appeals). He drew the attention of the Bench of the relevant portion of the adjudication order.

5. Heard both sides and perused the records.

6. The allegation is that respondent had not received the goods and utilized the credit on the basis of mere invoice. I find that the adjudicating

authority examined the record. The relevant portion of the adjudicating authority is reproduced below:-

"The noticee's contention get further supported by the fact that the receipt of the inputs in the noticee's factory wee verified by the Range Staff as is evident from the copy of Form D-3 Declaration duty filed by the notice and duly verified by the jurisdictional Inspector of Central Excise Range, both on the D-e Form as well as the RG 23-A Pat I register. All these transactions were duly accounted for in their books of accounts maintained in the ordinary course of business and had duly been accounted for in their RG-23A Part I and Part II Registers being maintained under the Central Excise Law. Further, the inputs were used in the manufacture of the final products which had been properly accounted for in the statutory records and were cleared from their factory on payment of duty. Therefore, it is incorrect to suggest that the invoice, in question, was procured without the actual receipt of the inputs when the receipt of inputs, in question had duly been physically verified by the jurisdictional Inspector of Central Excise Range, Malerkotla. The allegation of non-receipt of inputs is absolutely incorrect which has not been supported by any acceptable evidence as discussed above."

7. It is seen that the Revenue has not disputed the above facts particularly verification of the goods by the Range officer. In any event, it is evident from the verification of record that the appellants received the goods.

8. In view of that, I do not find any reason to interfere with the order of the Commissioner (Appeals). Accordingly, both the appeals are rejected.

(Order dictated and pronounced in the open Court).

(P.K. Das)
Member(Judicial)

MPS*