

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/3974/2006 - SM

Date 17/11/2008

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

To :
M/S KRISHNAAV ENGINEERING LTD.
25-SOUTH SIDE OF G.T. ROAD, INDUSTRIAL AREA,
GAHZIABAD (U.P.)
M/S KRISHNAAV ENGINEERING LTD.

Appellant
Vs
Respondent

C.C.E. GHAZIABAD

I am directed to transmit herewith a certified copy of Final order No 1466 / 2008-. SM[BR] dated 13.10.2008

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. GHAZIABAD

C.G.O.COMPLEX-II, KAMLA NEHRU NAGAR, GHAZIABAD.

2. Adv. / Consult

MR.R. KRISHNAN

297-E, POCKET-II, PHASE-I, DELHI-110 091.

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 Publications (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 Puniabi Bagh, New Delhi - 110026

12 Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thvagarava Road, T. Nagar, Chennai

13 Taxindiaonline.com Pvt.Ltd. B-XI/8183, Vasant Kuni, 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, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Appeal No.3974 of 2006-SM (BR)

[Arising out of Order-in-Appeal No.125/CE/GZB/2006 dated 21.08.2006
passed by the Commissioner of Central Excise (Appeals), Ghaziabad]

For approval and signature:

Date of Hearing/ Decision:13.10.08

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

1. Whether Press Reporters may be allowed to see
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?

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: yd,

M/s. Krishnaav Engineering Ltd.

...Appellants
[Rep. by Shri R. Krishanan, Advocate]

CCE, Ghaziabad

Vs.

...Respondent
[Rep. by Shri R.K. Verma, DR]

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

Final Order No. 1466/08-SM (BR) /Dated:13.10.2008

Per P.K. Das:

After hearing both the sides and on perusal of the records, it is seen
that the Appellants reversed the credit with interest availed on inputs
viz. furnace oil. Subsequently, they re-credited the proportionate amount

suo moto in their Cenvat Account. A show cause notice dated 27.11.2005 was issued to recover the amount as re-credited by them and to impose penalty. The Adjudicating Authority confirmed the demand of Rs.2,63,446/- and interest of Rs.39,513/- and also imposed penalty of Rs.3,2,959/- on the appellant. The Commissioner (Appeals) upheld the Adjudication Order. The Larger Bench of the Tribunal in the case of BDH Industries Ltd. Vs. CCE, Mumbai-I – 2008 (229) ELT 364 (Tribunal-LB) held that all types of refund have to be filed under Central Excise Rules and suo moto credit of the duty can not be taken by the assessee. In view of the decision of the Larger Bench of the Tribunal, the suo moto credit availed by the appellant is not sustainable. However, I find force in the submission of the Id. Advocate in respect of the imposition penalty. There is a conflicting decision of the Tribunal, which is decided by the Larger Bench of the Tribunal and, therefore, imposition of penalty is not warranted. Accordingly, the demand of duty and interest are upheld and penalty is set aside. The appeal is disposed of in the above terms.

Order dictated & pronounced in open court on 13.10.2008.

Ckp.

(P.K. Das)
Member (Judicial)