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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/3484/2006 – SM[BR] Date 19/11/2008

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

To :
C.C.E.INDORE
P.B.NO 10, MANIK BAGH PALACE, INDORE(MP)

C.C.E.INDORE Appellant

Vs

M/S G WALIOR CHEMICAL INDUSTRIES Respondent

I am directed to transmit herewith a certified copy of **Final order** No. 1478 / 2008 - SM[BR] dated 14.11.2008

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent

M/S G WALIOR CHEMICAL INDUSTRIES

BIRLAGRAM NAGDA,DISTT-UJJAIN(MP)

2. Adv. / Consult MS. ASMITA NAYAK ADV.

N/V;-----------------------

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,

West Block No.2, R.K.Puram, New Delhi

COURT-III

Date of hearing/decision:14.11.2008

Central Excise Appeal No.3484 of 2006-SM

Arising out of the order in appeal No.IND-1/234/2006 dated 22.6.06 passed by the Commissioner (Appeals),Customs & Central Excise, Indore.

For Approval and Signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2	Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
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

Appellant		Respondent
C.C. & C.Ex., Indore	vs.	M/s Gwalior Chemical Industries

Appearance:

Shri R.K. Varma, Authorized Departmental Representative (DR) for the Revenue and Ms. Ashmita Nayak, Advocate for the respondent

Coram: Hon'ble Mr. M. Veeraiyan, Member (Technical)

Final Order No. 1478/08-SM(BR)

Per M. Veeraiyan:

This is an appeal against the order of the Commissioner (Appeals) No. IND-1/234/2006 dated 22.6.06.

2. Heard both sides.

3. The respondents had sent certain capital goods for repair to the original supplier of the capital goods. The said party, admittedly, had undertaken, repair and while undertaking repair, appears to have replaced

certain parts and paid duty involved on the same. After repair, when the capital goods were returned, the supplier has raised invoices and paid duty and based on the said duty paid invoices, the respondent has taken the credit on the capital goods received back.

4. The original authority vide order dated 16.8.05 held that credit taken was valid. The Commissioner (Appeals) has upheld the order of the original authority, on appeal by the Department. In other words, both the original authority and Commissioner (Appeals) have decided the issue in favour of the respondent.

5. Further, the dutiability or otherwise of goods procured by the respondent cannot be determined by the officer in-charge of the respondent's unit. This power and the responsibility are with the jurisdictional officer in-charge of the dispatching/supplying unit. There is no dispute that the duty has been paid by the supplying unit. I have not been shown that the said duty has been varied by any proceeding at the supplier's end.

6. Under these circumstances, I do not find any reason to interfere with the order of the Commissioner (Appeals). The appeal by the Department is, therefore, rejected.

(Dictated and pronounced in the open Court)

(M. Veeraiyan)
Member (Technical)

scd/