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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/2149/2006-SM[BR] Date 30/05/2008

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

To :
M/S SURYA ALLOYS PVT LTD BILASPUR
1/1, CAMAC STREET, KOLKATA
110016

M/S SURYA ALLOYS PVT LTD BILASPUR — Appellant
Vs
THE COMMISSIONER OF CENTRAL EXCISE RAIPUR — Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 827 /2008 –SM[BR] dated 10.3.2008 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   THE COMMISSIONER OF CENTRAL EXCISE RAIPUR
   CENTRAL EXCISE BUILDING, TIKRAPARA, RAIPUR (C.G.)
2. Adv. / Consult
   MR.K.K ANAND
   A-5,BASEMENT,LAJPAT NAGAR-III NEW DELHI-24
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 Delhi -
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 60017
13. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(SM Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST BLOCK-II, R.K. PURAM, PRINCIPAL BENCH, NEW DELHI,
COURT NO. 1

Excise Appeal No.2149 of 2006

[Arising out of Order-in-Appeal No.99/RPR-I/2005 dated 30.08.2005 dated 30.08.2005 passed by the Commissioner of Central Excise (Appeals), Raipur].

Date of Hearing/ Decision: 10.3.2008

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?	:	

M/s. Surya Alloy Industries Pvt. Ltd. ...Appellant
[Rep. by Mr. Hemant Bajaj, Advocate]

Vs.

CCE, Raipur ...Respondent
[Rep. by Mr.S.L. Meena, SDR]

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

Final Order No.827/08-SM(BR)/Dated:10.3.2008

Per P.K. Das:

The appellant filed this appeal against denial of Deemed Credit during the period from 25.9.97 to 4.8.98 under Notification No.58/97-CE dated 30.08.97. A show cause notice dated 11.5.99 was issued to the appellant (i.e. receiver of the inputs) and the supplier of the inputs proposing to deny the Deemed Credit on the ground that the appellant actually received the Malleable Scrap of Steel instead of M.S. Flat and M.S. Square as declared in the invoice. It has also proposed to impose penalty on the supplier. The adjudicating authority dropped the proceedings. The Revenue filed an appeal before the Commissioner (Appeals) against the appellant. The Commissioner (Appeals) set aside the adjudication order and held that the appellants are not eligible for Deemed Credit and also imposed penalty of equal amount under Section 11 AC of the Central Excise Act, 1994 along with interest. He also observed that no penalty is imposable on the supplier of the goods.

2. Ld. Advocate on behalf of the appellant submits that the change of classification of the goods at the buyer's end is not permissible as held by the Hon'ble Supreme Court in the case of Sarvesh Refractories (P) Ltd. Vs. CCE reported in 2007 (218) ELT 488 (S.C.). He also relied upon the decisions of the Tribunal as under:-

(a) Commissioner of Central Excise, Ludhiana Vs. Pawan Ispat Udyog – 2007 (213) ELT 134 (Tribunal-Delhi)

(b) Hitesh Silicate Industries Vs. CCE, Jaipur 2002 (150) ELT 89 (Tribunal-Delhi).

3. Ld. DR on behalf of the Revenue reiterates the finding of the Commissioner (Appeals). He submits that the appellant received the Malleable scrap, which is exempted from duty by Notification No.49/97-CE dated 1.8.1997. The appellant is not eligible for Deemed Credit on waste and scrap.

4. After hearing both the sides and on perusal of the records, I find that show cause notice dated 11.5.99 proposed to disallow the Deemed Credit to the appellants on the ground that the supplier misdeclared the particulars in the invoice issued for excisable goods. It has also proposed to impose penalty under ~~Section~~ Rule 209A of the Central Excise Rules, 1944 for entering wilfully wrong and incorrect particulars issued for excisable goods. Notification No.58/97-CE dated 30.08.97 extended Deemed Credit on the inputs declared in the said Notification and the same shall be equivalent to the amount calculated at the rate of 12% of the price as declared by the manufacturer, in the invoice accompanying the said inputs and credit of the deemed duty. Clause 5 of the said Notification provides that the provisions of this Notification shall not apply to inputs, where the manufacturer of the said inputs has not declared the invoice price of the said inputs correctly in the documents at the time of their clearance from their factory. In the present case, the show cause notice proposed that the manufacturer of the inputs declared the particulars of invoice wrongly and incorrectly. The adjudicating authority dropped the

proceedings and he observed that the only fact is that the goods/inputs were subjected to melting cannot be the determining factor for classification under Chapter 7204.90. It cannot be considered that every article i.e. re-melting has to be taken under 7204.90. It is seen from the record that the Revenue has not filed any appeal against the manufacturer of inputs for alleged classification as proposed in the show cause notice. Thus, it appears that the Revenue has accepted the adjudication order insofar it is concerned against the supplier of the inputs. Therefore, the allegation against the recipient of inputs (i.e. the appellants) is not sustainable. The Hon'ble Supreme Court in the case of Sarvesh Refractories (P) Ltd. (supra) held that the change of classification of the goods, at buyer's end is not permissible. The Tribunal in the case of Pawan Ispat Udyog (supra) allowed the credit because no proceeding was initiated against the manufacturer's inputs regarding mis-declaration of goods. In the present case, I find that the Revenue has not filed any appeal against the manufacturer of inputs. So, the classification of inputs at the buyer's end is not permissible. Accordingly, the impugned order is set aside and the appeal is allowed with consequential relief.

Order dictated & pronounced in open court on 10.03.2008.

(P.K. Das)
Member (Judicial)

Ckp.