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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/1236/2006-1237/2006-SM[BR] Date 04/06/2008

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

To :
CCE,JAIPUR-I
NCRB,STATUE CIRCLE,C SCHEME,JAIPUR

CCE,JAIPUR-I Appellant
Vs
M/S CAPITAL INPEX P LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 845 -846 /2008 –SM[BR] dated 24.3.2008 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   1. M/S CAPITAL INPEX P LTD.
   2. M/S CAPITAL INPEX PVT. LTD.
   G-1071/B,RIICO INDISTRIAL AREA,PHASE-III,BHILWARA(RAJ)
2. Adv. / Consult SHRI L.P. ASTHANA ADV.
   R-163 , SECOND FLOOR GREATER KAILASH PART-I
   NEW DELHI-110048
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 APPELLTE TRIBUNAL,
PRINCIPAL BENCH, COURT NO.III

Excise Appeals Nos.1236 and 1237/2006-SM (BR)

(Arising out of common Order-in-Appeal No.481-482(MPM)/CE/JPR-I/2005 dated 16.1.2006 and of the Commissioner (Appeals) Customs & Central Excise, Jalandhar.

For approval and signature:

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

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1. Whether Press Reporters may be allowed to see the order for publication as per Rue 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 se the fair Copy of the Order?
4. Whether Order is to be circulated to the Department Authorities?

No.

Commissioner of Central Excise, Jaipur ...Appellants

Versus

M/s. Capital Impex Pvt. Ltd. .....Respondent

Appearance:

Shri A.K. Rastogi, DR Departmental Representative for the Appellant.
Ms. Reena Khair and Shri L.P. Asthana, Advocates for the Respondent.

Final Order No.245-46/08-SM(BR)/Dated: 24.3.2008

Per P.K. Das:

The relevant facts of the case, in brief, are that the respondent exported the goods following the procedure under Rule 19 of the Central Excise Rules, 2002. The goods were exempted under Notification No.10/2003-CE dated 1.3.2003. They furnished Latter of Undertaking/Bond. Superintendent of Central Excise, while signing the certificate in Part-A in the ARE's have mentioned that, "goods are exempted under Notification No.10/2003-C.E/ dated 1.3.2003" and scored out LUT and allowed export. The respondent filed appeal against the certificate in the ARE-I Form before the Commissioner (Appeals) whereby it has been held that the respondent correctly followed the procedure laid down under Rule 19 of the Central Excise Rules, 2002. He has followed the earlier order-in-appeal No.406-407 (MPM)/CE/JPR-I/2005 dated 24.10.2005 in favour of the respondent. Revenue filed this appeal against the order of the Commissioner (Appeals).

2. Ld. DR on behalf of the Revenue submits by insertion of sub-section 1(A) of Section 5 A of the Central Excise Act, 1944 w.e.f. 13.5.2005, it has been declared that wherein exemption under sub-section (1) in respect of any excisable goods from the whole of the duty of excise leviable thereunder has been granted, manufacture of such excisable goods shall not pay the duty on exempted goods. He submits that in view of insertion of Section 1(A) of 5 A of the Act, the Respondent is not

required to follow the procedure under Rule 19 of the Central Excise Rules.

3. Ld. Advocate on behalf of the Respondent submits that the Commissioner (Appeals) passed the order following his earlier Order-in-Appeal dated 24.10.2005 in the Respondent's own case, which has been upheld by this Tribunal vide Final Order No.321-22/2008-SM(BR) dated 31.12.2007. She submits that the Tribunal observed that there is no infirmity in the order of the Commissioner (Appeals). She further submits that the Tribunal allowed the appeal of the Revenue by mistake and the respondent would file application for rectification of mistake in the said order. She also submits that the decision of the Tribunal in the Final Order dated 31.12.2007 relates to the exports in the month of August, 2005.

4. After hearing both the sides and on perusal of the records, I find that the identical issue was before the Tribunal in the Respondent's own case, whereby the Tribunal held that there is no infirmity in the order of the Commissioner (Appeals). For the purpose of proper appreciation, the relevant portion of the Final Order dated 31.12.2007 is reproduced below:-

> "4. The main contention of the Revenue is that as the goods were exempted, therefore, there is no need to follow the procedure provided under Rule 19 of the Central Excise

Rules in respect of goods exported. I find that the provisions of Rule 19 of Rules are specific in respect of export goods. The respondent executed a letter of undertaking in terms of Rule 19 of the Central Excise Rules, and the same has been accepted by the Dy. Commissioner of Central Excise. Further, I find that as per the Board's instructions benefit of input stage rebate is available on export of finished goods whether excisable or not. For ready reference, Board's instructions are reproduced below:-

"It may be noted that in rule 19 of the said Rules and in said notification, expression 'export goods' has been used. This refers to excisable goods (dutiable or exempted) as well as non-excisable goods. Thus, the benefit of input stage rebate can be claimed on export of all finished goods whether excisable or not."

5. In view of the above, respectfully following the decision of the Tribunal in the Respondent's own case by Final Order dated 31.12.2007, I do not find any reason to interfere the order of the Commissioner (Appeals). Accordingly, the appeal is rejected.

Order dictated & pronounced in open court on 24.3.2008.

(P.K. Das)
Member (Judicial)

Ckp.