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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/3937/2006-SM[BR] Date 10/06/2008

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

To :
ERGO AUTO LTD
PLOT NO 26, SECTOR 27 A, FARIDABAD.

ERGO AUTO LTD Appellant
Vs
C.C.E. DELHI IV Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 905 /2008 –SM[BR] dated 2.4.2008 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. DELHI IV
   NEW CGO COMPLEX, NH-IV, FARIDABAD, HARYANA 121001.
2. Adv. / Consult
   MR.S. K. PAHWA
   MARWAH & PAHWA, 45, ARADHANA SECTOR 13, R. K. PURAM, NEW DELHI-110066.
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)

# IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, R.K. PURAM, W.B. NO.2, PRINCIPAL BENCH NEW DELHI, COURT NO. III

**Service Tax Appeal No.3937 of 2006 -SM (BR)**

[Arising out of Order-in-Original No.14/KKJ/Adjn./2006-2007 dated 20.09.2006 passed by the Commissioner of Central Excise, Faridabad]

**Date of Hearing/ Decision:2.4.2008**

**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 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? :

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M/s.Ergo Auto Ltd. Appellants
[Rep.by Shri S.K. Pahwa, Advocate]

Vs.

CCE, Faridabad ....Respondent
[Rep. by Shri S.L. Meena, DR]

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

Final Order No.905/08-SM(BR)/Dated:2.4.2008.

**Per P.K. Das**:

The Appellant filed this appeal against rejection of application for remission of duty.

2. The relevant facts of the case, in brief, are that the Appellant is engaged in the manufacture of Head Gear (Safety Helmets) and Accessories classifiable under sub-heading No.6501.00, 6501.90 and 8714.00 of the erstwhile Central Excise Tariff Act, 1985. On 29.9.2001, there was a fire in their factory due to electric short circuit in 11 KV transformer fitted near the factory gate. The Appellant applied for remission of duty on the finished goods lying in the factory destroyed by fire. The Commissioner of Central Excise rejected the application for remission of duty.

3. Ld. Advocate on behalf of the Appellant drew the attention of the Bench to the Insurance Report. He submits that the Appellant received insurance claim excluding the duty on the finished goods destroyed by fire. He relied upon the decisions of the Tribunal in the case as under:

(a) M/s. Milton Plastic Industries Vs. CCE, Vadodara
2005 (188) ELT 206 (Tribunal-Mumbai)

(b) M/s. Hindustan Cables Ltd. Vs. CCE, Allahabad
2006 (198) ELT 527 (Tribunal-Delhi)

(c) M/s. Sami Labs Ltd. Vs. CC, Bangalore
2007 (216) ELT 59 (Tribunal-Bangalore)

(d) M/s. Shiva Essential Oils & Chemicals Vs. CCE, Noida
2004 (168) ELT 121 (Tribunal-Delhi)

(e) M/s. U.P. State Sugar Corporation Ltd. Vs. CCE,Meerut 2004 (168) ELT 280 (Tribunal-Delhi)

4. Ld. DR on behalf of the Revenue reiterates the findings of the Commissioner. He submits that the Appellant had failed to take proper care to avoid the accident caused by the fire in transformer. He further submits that the Appellant had not placed any evidence that the fire was caused due to un-avoidable accident. He relied upon the decision of the Hon'ble High Court in the case of Mangal Sen Lal Man Vs. Union of India - 2000 (125) ELT 61 (All.). He also relied upon the decision of the Tribunal in the case of Dharampal Satyapal Ltd. Vs. CCE, Noida – 2004 (167) ELT 291 (Tribunal-Delhi) and M/s. Voltas Limited Vs. CCE, Nagpur – 2003 (156) ELT 295 (Tribunal-Mumbai).

5. After hearing both the sides and on perusal of the records, I find that the Commissioner had not disputed that the excisable goods were destroyed in the fire accident. But he denied the remission of duty on the ground that the fire accident could have been avoided if the scrap of inflammable material had not been stored near the transformer. It has been observed by the Commissioner that the Surveyor's report indicates failure on the part of the management in taking suitable precaution to prevent any eventuality arising out of fire. He also observed that the fire accident was occurred due to negligence of the Appellant and it cannot be

termed as “unavoidable accident”. For the purpose of proper appreciation, the relevant portion of the Surveyor’s report is reproduced below:-

> “It was reported that on 29.09.2001 around 4.50 A.M., the Guard on duty near Gate No.16, Mr. Krishna Singh heard some unusual sound coming from/near Transformer. On reaching Transformer he found sparking from Transformers which fell on scrap/waste a Paper, Plastic, Packing Material (Lying near Transformer on ground floor) which caught fire & was burning. Mr. Krishna Singh raised an alarm & informed the other guards on main-gate, patrolling guard Mr. Jai Narayan Singh and Mr.Rama Nand Singh about fire who also reached at spot. One Mr. Dhananjay Dubey working on Plastic Moulding M/c & Mr. Padam Singh, Electrician also reached at spot. Mr. Jai Narayan Singh reportedly informed police control room & Fire Brigade & then Mr. R.B. Khurana & other officials of the Insured Fire Team reportedly reached around 5.30 A.M. In the meantime, Fire Fighting started with the help of Fire extinguishers. The fire has spread in the entire building of Plot No.16 and has turn serious.”

7. On perusal of the report of the Surveyor, it is seen that all the steps have been taken to avoid the destruction of the goods. Ld. DR submits that the Appellant kept the plastic and waste materials near the transformer, which indicates that the Appellant has not taken sufficient precaution. I do not find any material that the Appellant intentionally kept the plastic materials near to the transformer to cause the fire accident. Apart from that, it is seen from the Surveyor’s report that the Representative of the Appellant had took the sufficient steps to stop the fire. I find that the Insurance Company had accepted the claim of the Appellant on the goods destroyed by fire. The Tribunal in the case of

Hindustan Cables Ltd. (supra) allowed the remission application and held that unexpected fire accident and precaution taken immediately thereafter to prevent spreading of fire, bring the incident under category of unavoidable accident. In the case of Sami Labs Ltd. (supra), it has been held by the Tribunal that the accident is an act of God and it is not correct to demand the duty forgo. In the case of Shiva Essential Oil & Chemicals (supra), it has been held by the Tribunal that the Commissioner is not required to ascertain the cause of fire in absence of proof to show that fire caused by appellant or by his negligence. In the case of U.P. State Sugar Corporation Ltd. (supra), the Tribunal observed that denial of remission application on the ground that the short circuit accrued due to temporary electrical fitting, which is carelessness on the part of the Appellant and such findings are not justified as no accident can be attributed to anybody's carelessness.

7. Ld. DR relied upon the decision of the Tribunal in the case of Dharampal Satyapal Ltd. (supra) passed by the Single Member Bench. It is seen that the case relates to damage of goods occurred due to heavy rain, which is not applicable herein. Ld. DR also relied upon the decision of the Hon'ble Allahabad High Court in the case of Mangal Sen Lal Man (supra). It is seen from the said decision that it was a case of arson. The fire was deliberate act of one Bashir.

8. I find that in the present case, there is no material that the fire was occurred due to deliberate act on the part of the Appellant. I also noticed that the Appellant placed the Surveyor's report, F.I.R and other evidences in order to establish that the goods were destroyed due to unavoidable accident. So, the case laws relied upon by the ld. DR are not applicable.

9. In view of the above, the order of the Commissioner is set aside and the appeal is allowed.

Order dictated & pronounced in open court on 2.4.2008.

( P.K. Das )
Member (Judicial)

Ckp.