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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/3233/2006-SM[BR] Date 12/06/2008

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

To :
C.C.E.RAIPUR
DHAMTARI ROAD,TIKRAPARA,RAIPUR.

C.C.E.RAIPUR Appellant
Vs
M/S BWL LTD Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 912 /2008 –SM[BR] dated 16.5.2008 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 BWL LTD
   INDUSTRIA ESTATE,POST BOX NO 14,BHILAI(CG)
2. Adv. / Consult MS. REENA KHAIR 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)

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

NEW DELHI, COURT NO. III

Excise Appeal No.3233 of 2006-SM (BR)

[Arising out of Order-in-Appeal No.71/RPR-II/2006 dated 30.06.2006 passed by the Commissioner (Appeals), Central Excise, Raipur]

Date of Hearing/Decision:16.5.2008

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? :

No.

CCE, Raipur ....Appellant

[Rep. by Shri B.S. Suhag, DR]

Vs.

M/s.BWL Ltd. .....Respondent

[Rep. by Ms. Reena Khair, Advocate)

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

Final **ORDER NO....912/08-SM../Dated:.16.5.2008**

Per P.K. Das:

The relevant facts of the case, in brief, are that the Respondents purchased goods viz. Wire Rods from M/s. Hira Steels Ltd., Raipur and availed Modvat credit as indicated in the Central Excise Invoices. It has been alleged that M/s. Hira Steels Ltd. was covered under Section 3 A of the Central Excise Act, 1944 and was not eligible to pay Advelorem duty. The Commissioner (appeals) set aside the Adjudication Order and allowed the appeal of the Respondent. The relevant portion of the said order is reproduced below:-

> "6. It is also seen that M/s. Hira Steels Limited, Raipur have issued invoices showing payment of duty on goods, namely, wire rods (in coils). The appellants have taken credit of duty paid by M/s. Hira Steels Limited, Raipur. Thus, there cannot be any dispute that the goods which were received by the appellants had suffered duty of excise to the extent indicated on the invoices. Secondly, such goods have been received within the factory of the appellants. When these requirements have been fulfilled, than credit availed and utilized by the appellants cannot be denied."

2. Ld. DR submits that the Commissioner (Appeals) should have remanded the matter to the Adjudicating Authority to keep the matter pending until the issue of M/s. Hira Steels Limited working under Section 3 A of the Central Excise Act, 1944 or otherwise is decided.

3. Ld. Advocate on behalf of the Respondent submits that the Respondent availed Credit on the basis of the central excise duty paying documents. There is no dispute of the genuinety of the documents. She

further submits that it is well settled that Credit cannot be denied for the alleged irregularity on the part of the supplier.

4. After hearing both the sides and on perusal of the records, I find that the Respondent availed Credit on the basis of the duty paying documents, which were not held irregular by the jurisdictional Central Excise Authorities of the supplier. Therefore, the demand of duty against the Respondent, recipient of the inputs is not sustainable. Accordingly, I do not find any reason to interfere the order of the Commissioner (Appeals). The appeal filed by the Revenue is rejected.

Order dictated & pronounced in open court on 16.5.2008.

(P. K. Das)
Member (Judicial)

Ckp.