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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/989 /2006-SM[BR]

Date 16/06/2008

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

To :
C.C.E. RAIPUR
CENTRAL EXCISE BUILDING, DHAMTARI ROAD,
TIKRAPARA, RAIPUR 492001.

C.C.E. RAIPUR

Appellant
Vs
Respondent

M/S ELECTORNICS & POWER COTROL CORP

I am directed to transmit herewith a certified copy of **Final order No.** 961 /2008 –SM[BR] dated 8.4.2008 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

**Copy to :**

1. Respondent
   M/S ELECTORNICS & POWER COTROL CORP
   01,INDL ESTATE,BHILAI,DISTT DURG (CG)
2. Adv. / Consult
   MR.V.R.SETHI
   401,SATYA CINEMA BUILDING, RANJEET NAGAR,DELHI-110008
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
PRINCIPAL BENCH, NEW DELHI
COURT NO.II

E/Appeal No.989/06-SM

(Arising out of order in appeal No.68/RPR.II/05 dated 29.12.06 passed by the Commissioner of Central Excise (Appeals), Raipur)

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 Sumit Kumar, DR)

Vs

M/s Electronic & Power Control Corp — Respondent
(Rep. by Shri V.R. Sethi, Advocate)

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

Date of Hearing: 8.4.08

Final Order No. 961 /2008-SM(BR)

Per P.K. Das:

The relevant facts of the case, in brief, are that on 24th January,2001, the Central Excise officers visited the Respondents factory and found one Gate Register for the period from 23rd June, 1998 to 15th January, 2000. The

Gate Register contained the details of receipt and removal of goods/stores etc. The Gate Register was maintained by the security persons at their factory gate. The authenticity of the Gate Register is not in dispute as per the statement of various persons of the Respondents factory. The Central Excise officers during stock verification detected shortage of inputs involving credit of Rs 2,949/-. A Show Cause Notice was issued proposing demand of Rs. 2,52,191/- on the basis of Gate Register and credit of Rs. 2,949/- on the shortage of inputs. The Adjudicating Authority dropped the demand of duty on the basis of Gate Register and confirmed the demand of Rs.2,949/- on the shortage of inputs and imposed penalty of Rs.500/- under Rule 173-Q of the erstwhile Central Excise Rules, 1944. The Revenue filed appeal before the Commissioner (Appeals) which was rejected. Hence the Revenue filed appeal before this Tribunal.

2. After hearing both the sides and on perusal of record, I find that the main contention of the Revenue is that authenticity of the Gate Register was proved by the statements of various persons and Shri A.N. Chatterjee, Manager in his statement dated 31.10.01 stated that they did not undertake repairing work. It is seen that the Respondents in reply to Show Cause Notice took a stand that the alleged quantity are related to repairing work and both the authorities below dropped the demand of duty after examining the statement of repairing work. The learned DR contended that the plea of the Respondent in reply to show cause notice is after thought.

3. It is revealed from the Show Cause Notice that Shri AN. Chatterjee, Manager in his letter dated 9.11.2001 stated that goods are parts of the machines and no modvat credit was availed and the goods were received by

them for the purpose of repairing. It has been alleged in the show cause notice that Shri A.N. Chatterjee failed to produce any documentary evidence in any nature in support of his contention.

4. It is seen from the Adjudication Order that the Respondents had given detailed explanation in respect of each items for repairing job which was recorded at para 10 and its sub paras in the Adjudication Order. After considering the details of repairing works, no evidence was found to establish the charge of clandestine removal of goods. The Commissioner (Appeals) rejected the appeal filed by the Revenue and the relevant portion of the findings is reproduced below:-

*"The respondents in the cross objection has given details of removal of each and every item under the gate register to state which of those goods sent for repair or sent out after repair by them, as sample etc. None of these details which were also so stated in the reply to the notice have been controverted by the reviewing authority. Thus in the absence of positive evidence, it simply does not imply that the goods were removed clandestinely. In view of this, I do not see merit in the Revenue Application and the same stands rejected."*

5. The learned DR relied upon the decision of the Tribunal in the case of Aditya Cement Industries Vs CCE Hyderabad reported in 1996 (84) ELT 229 and Bharat Plast Vs CCE Valsad reported in 2004 (168) ELT 204. In the case of Aditya Steel Industries (Supra), there was document of double transport of goods from the Appellants factory. The Appellants were using same Gate passes twice, it has been held that the removal of ~~sound~~ consignment was without payment of duty. I find that in the present case, the facts are different and therefore, the said case law is not applicable. The facts in the case of Bharat Plast (Supra) is that once production was recorded

and shown as balance and compared to the quantity available found, shortage is deemed to have been removed in a clandestine manner, which is not applicable in the present case.

6. I find the Revenue in the Grounds of Appeal, strongly relied upon the statement of Shri A.N. Chatterjee, Manager. It is revealed from the Show Cause Notice that Shri A.N. Chatterjee, Manager in his letter dated 9th November, 2001 disclosed the repairing job and stated the details of repairing job in reply to Show Cause Notice. Both the authorities below verified the statement of repairing job and thereafter, there is no material for charge of clandestine removal. The Revenue in the Grounds of Appeal also contended that the Respondents failed to observe the procedure for movement of excisable goods for the purpose of repairing/return as provided under the Central Excise Rules. So, in any event, the failure to observe the procedure of removal of repairing goods cannot be treated as charge of clandestine removal. Accordingly, I do not find any reason to interfere with the order of the Commissioner (Appeals). The appeal filed ~~field~~ by the Revenue is rejected.

(Order dictated and pronounced in the open Court).

(P.K. Das)
Member(Judicial)

MPS*