(16)

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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/3120/2006 & 3130 /2006 –SM[BR] Date 08/07/2008

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

To :
C.C.E.INDORE
P.B. NO 10,MANIK BAGH PALACE,INDORE

C.C.E.INDORE Appellant

Vs

M/S METALMAN PIPE Respondent

I am directed to transmit herewith a certified copy of **Final order** No. 1049 -1050 /2008 –SM[BR] dated 25.6.2008

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 METALMAN PIPE
2. MR. VIJAY SONI, MD
PITHAMPUR,DISTT-DHAR(MP)
2. Adv. / Consult SHRI RAVI RAGHAVAN ADV.
B-6/10 S.J. ENCLAVE NEW DELHI -110029

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 Nos. 3120 & 3130/06-SM(BR)

(Arising out of order in appeal No.Ind/1/63/06 dated 14.2.2006 passed by the Commissioner of Central Excise (Appeals), Indore)

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, Indore	Appellant (Rep. by Shri S.L. Meena, DR)
Vs	
1.M/s Metalman Pipe 2.Mr. Vijay Soni, MD	Respondent (Rep. by Shri Ravi Raghavan, Advocate)

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

Date of Hearing: 25.6.08

FINAL Order No. 1049-1050 /2008-SM(BR)

Per P.K. Das:

It has been alleged that the Respondents had availed Modvat credit wrongly on the Galvanized Corrugated Sheets during the period 22.12.94 to 10.1.95. It has further been alleged that the Respondents had no facility of corrugation of sheet in their factory. The Adjudicating Authority disallowed the credit of Rs.6,77,610/- and imposed penalty. The Commissioner (Appeals) set aside the Adjudication Order. Hence the Revenue filed these appeals.

2. After hearing both the sides and on perusal of the record, it is seen that the Adjudicating Authority had come to a conclusion that the respondents had not received Corrugated Machines in the factory on the basis of invoice dated 3.1.1995 of supplier of the said machine and statement of the respondent. It is seen from the order of the Commissioner (Appeals) that the respondents produced the record of the use of the corrugated machines in the manufacture of corrugated sheets which were ~~are~~ ultimately exported. For proper appreciation of the case, the relevant portion of the finding of the Commissioner (Appeals) is reproduced below:-

"*In view of this position, the Appellant No.1 has claimed that the conclusion drawn by the departmental authorities that the machine was not available with them prior to 3.1.95 is incorrect and therefore, the credit taken by them on the galvanized sheets purchased by them after 22.12.94 is correctly eligible to them. I also find from the records that as on 13.12.94 the Appellant No. 1 was having a stock of 100.115 MT of inputs and that they had produced 100.110 MT of corrugated galvanized sheets on 1.1.95 leaving nil raw material. The Department has even contested the production of corrugated sheets to the extent of 100.110 MT on a single day namely 1.1.95, the day on which the production entry has been made by the Appellant. However, it is possible that the production was made on 30.12.94 itself on the basis of a delivery challan. Also on 3.1.95 the Appellant had exported only 110.910 MT of corrugated sheets as against production shown on record as 100.110 + 24.430= 124.540 and the balance of 67.815 MT was exported only on 10.1.95. Further in this case, the claim of the Appellant is that they have exported corrugated galvanized sheets* *under 8 different invoices and that they did not export the galvanized sheets purchased as input from their supplier."*

3. I find that Revenue has not disputed the above facts. It is seen that the Revenue proceeded merely on the basis of invoice of the supplier of machine. In view of that, I do not find any merit to interfere with the order of the Commissioner (Appeals). Accordingly, the Appeals filed by the revenue are rejected.

(Order dictated and pronounced in the open Court).

(P.K. Das)
Member(Judicial)

MPS*