TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

CUSTOMS. EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
SINGLE MEMBER APPEAL BRANCH

Date 28/07/2008

Appeal No. E/3234/2006-SM[BR]

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 AGRAWAL INDUSTRIES — Respondent

I am directed to transmit herewith a certified copy of **Final order No 1084 /2008 –SM[BR]**. dated 27.6.2008 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
   M/S AGRAWAL INDUSTRIES
   RAIGARH(CG)
2. Adv. / Consult
   NONE;-----------
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. 3234/06-SM

(Arising out of order in appeal No.128/RPR.I/06 dated 23.6.06 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?

N

CCE, Raipur — Appellant (Rep. by Shri B.S. Suhag, DR)

Vs

M/s Aggarwal Industries — Respondent (Rep. by none)

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

Date of Hearing: 27.6.08

Final Order No. 1084 /2008-SM(BR)

Per P.K. Das:

The Revenue filed this appeal against the order of Commissioner (Appeals) whereby the Adjudication order was upheld in respect of availment of deemed credit of Rs. 38,902/-.

2. The relevant facts of the case in brief, are that the respondents are engaged in the manufacture of Low Carbon Ferro Manganese. The Respondents availed deemed credit on Waste and Scrap under the cover of Bills of M/s Delhi Wires Industries. It has been alleged that Waste and Scrap of Aluminium were exempted by Notification No. 182/84-CE dated 1.8.84 subject to the condition that no credit was availed under Rule 57-A of Central Excise Rules. The Adjudicating Authority dropped the proceedings. Revenue filed appeal before the Commissioner (Appeals), whereby appeal was rejected.

3. After hearing the learned DR and on perusal of the record, the relevant portion of the order of the Commissioner (Appeals) is reproduced below:-

"*That being that the exemption would be available provided no credit under rule 57A of the erstwhile Central Excise Rules, 1944 has been taken on the inputs from which scrap has been generated. In case such credit has been availed, then it would have to be reversed. Therefore, this exemption notification is conditional as it is subject to non-availment of credit on the inputs, from which scrap has arisen. When an exemption notification is conditional and the goods have been purchased from the open market, it cannot be stated with certainty whether the credit on input, from which scrap got generated, was availed or not. Therefore, it cannot be stated for sure whether the waste and scrap was cleared on availing such exemption notification. Thus to state that the waste and scrap was clearly recognizable as non-duty paid or chargeable to nil rate of duty would not be correct. In view of this, the lower authority rightly held the goods entitled to deemed credit.*"

4. In view of the above finding, I find that the Revenue failed to produce any material that the goods were non-duty paid. So, I do not find any

infirmity in the order of the Commissioner (Appeals). The Appeal filed by the Revenue is rejected

(Order dictated and pronounced in the open Court).

(P.K. Das)
Member(Judicial)

MPS*