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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/2409/2006-SM[BR] Date 29/07/2008

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

To :
C.C.E. JALLANDHAR(HQ. AT CHANDIGARH)
C.R.BUILDING, PLOT NO. 19, SECTOR 17-C,
CHANDIGARH.
C.C.E. JALLANDHAR(HQ. AT CHANDIGARH) Appellant
Vs
M/S ASHWANI NUT BOLT IND Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1103 /2008 –SM[BR] dated 24.7.2008 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 ASHWANI NUT BOLT IND
   G.T.ROAD BYE PASS,JALANDHAR
2. Adv. / Consult SHRI SUDHRIR MALHOTRA ADV.
   13-R, HUKAM CHAND COLONY NEAR D.A.V. COLLAGE
   JALANDHAR
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 AND SERVICE TAX APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI, COURT NO.1

EXCISE APPEAL NO. 2409 OF 2006-Single Member

[Arising out of order-in-Appeal No.313/CE/CHD/05 dated 30.8.2006 passed by Commissioner (Appeals), Central Excise, Chandigarh]

Date of Hearing: 24.7.2008
Date of Decision:24.7.2008

For approval and signature:

Hon'ble Ms. Jyoti Balasundaram, Vice-President

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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? : Yes

2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : No

3. Whether Their Lordships wish to see the fair copy of the Order? : Seen

4. Whether Order is to be circulated to the Departmental authorities? : Yes

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CCE, Jalandhar — Applicant
[Rep. by: Shri S,Gautam, DR]

Versus

M/s. Ashwani Nut Bolt Industries — Respondent
[Rep.by : Shri S.Malhotra,Advocate]

Coram: Hon'ble Ms. Jyoti Balasundaram, Vice-President

Final **ORDER** No. 1103/08-SM(BR)

Per Jyoti Balasundaram:

Heard both sides on the appeal of the Revenue against the order of the Commissioner (Appeals) who has set aside the adjudication order passed by the Additional Commissioner confirming a demand of Rs.47,705/- as representing credit wrongly availed on bars and rods received from M/s. Thapar Concast Ltd. on the ground that the credit was not admissible since the description of the goods on the invoice was bars and rods (other alloy steel) whereas the bars and rods were of non-alloy steel, and imposed penalty of equal amount.

2. No doubt, the goods were described in the invoices issued by the manufacturer/supplier as bars and rods (other alloy steel). However, the fact remains that the supplier is a manufacturer of non-alloy steel products and there is no dispute that the goods received from the supplier of the respondents herein were of non-alloy steel. It appears that the only mistake in this case is the wrong description of the goods by the manufacturer/supplier on his invoices. I find that no show cause notice has been issued to the manufacturer asking him to show cause against the wrong description of the goods in the invoices. On the other hand, there is no dispute that the non-alloy steel received by the respondents was duty paid and therefore, there should be no objection in law to the respondents' taking credit on the duty paying documents. In this view of the matter I do not find any reason to interfere with the order of the Commissioner (Appeals) and accordingly uphold the same and reject the appeal.

[Dictated and pronounced in the open Court on 24.7.2008]

[Jyoti Balasundaram]
Vice-President

nk

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Website : www.cestat.gov.in

Email : delhi@cestat.gov.i

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

(Principal Bench)

West Block No.2, R.K. Puram, New Delhi-110066

SINGLE MEMBER APPEAL BRANCH

Date :23/06/2010

MISC Order No. 144 / 2010-SM[BR]

Application E / ROM / 66 / 2009 –SM[BR] IN

Appeal No. E/2409/2006 – SM [BR]

1. Appellant

   C.C.E. JALLANDHAR(HQ. AT CHANDIGARH)
   C.R.BUILDING, PLOT NO. 19, SECTOR 17-C,
   CHANDIGARH.

2. Respondent

   M/S ASHWANI NUT BOLT IND

   G.T.ROAD BYE PASS,JALANDHAR

3. Adv / Consult : SHRI SUDHIR MALHOTRA ADV.
   13-R, HUKAM CHAND COLONY , NEAR D.A.V.
   COLLEAGE, JALANDHAR[PB]

4. C.D.R
5. Bar Association, CESTAT, New Delhi.
6. Director Publications, Customs, Excise. I.P. Estate, New Delhi
7. M/s Centax Publications Pvt Ltd., 1512-B, Bhishm Pitamah Marg, Opp. ICICI Bank of Defence Colony, New Delhi - 110003
8. Company Law Institute of India Pvt Ltd, No.2 (OLD No.36),Vaithyaram Street, T. Nagar, Chennai 600017
9. Deeparchie Publications, M-93, Marg. 43, Saket, New Delhi - 110017.
10. Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi -110005
11. Easy Service Tax Online Dot Com Pvt. Ltd. 407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad - 15
12. LAWCRUX Advisors (P) Ltd, Law House,1-8,Sector - 10, Faridabad 121003 (Haryana)
13. TaxIndiaOnline.com Pvt Ltd, Unit No. 1, 2nd Floor, Vasant Arcade Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard File

Assistant Registrar
(SM Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

CHAMBER

Excise Rectification of Mistake No. 66 of 2009 in
Excise Appeal No. 2[illegible]9 of 2006

DATE OF HEARING : 10.06.2010
DATE OF DECISION : 10.06.2010

CCE, Jalandhar ..... **Applicant**
(Rep by Sh. S.K. Bhaskar, DR)

VERSUS

M/s Ashwani Nut Bolt Indus. ..... **Respondent**
(Rep. by Shri S. Malhotra, Adv.)

CORAM : **HON'BLE MR. JUSTICE RMS KHANDEPARKAR, PRESIDENT**

Misc **ORAL ORDER NO.** 144/2010-SM(BR)

PER JUSTICE R.M.S. KHANDEPARKAR :

Heard the learned Departmental Representative for the applicant and the learned Advocate for the respondents.

2. By the present application, the Department is seeking recall of the final order dated 24th July, 2008 and for reconsideration of the matter on three grounds – firstly, the observation about non-issuance of show cause notice to the manufacturer in the said order was not correct, secondly, the observation about absence of any objection in law for the respondents taking credit on the duty paying documents in relation to the raw-materials is also incorrect in view of the fact that the raw-materials

utilized were of description different than those mentioned in the invoices pertaining to raw-materials, and thirdly, that the modvat credit, on the basis of the documents in question, could not have been availed on account of difference in description in invoice vis-à-vis the actual product utilized as raw-materials.

3. The learned DR referring to the order of the High Court of Punjab & Haryana dated 17th August, 2009 in CEA No. 68 of 2009 submitted that, the present application has been filed in terms of the observations made in the said order by the Hon'ble High Court and considering the fact that the findings arrived at in the order dated 24th July, 2008 are contrary to the materials on record, the said order needs to be recalled.

4. The learned advocate for the respondents, on the other hand, while placing written submissions on record, submitted that, the entire claim in the matter is for Rs. 47,705/- and none of the findings can be said to be contrary to the findings on record, besides the order cannot be recalled on those grounds.

5. For exercise of powers for recall of the order, it is settled law that, it is only in cases of error apparent on record or on account of any mistake being committed by the Tribunal itself that the order can be recalled. Incorrect appreciation of the materials on record or findings which can be disclosed to be not consonance with the materials on record on the basis of elaborate arguments in relation to the appreciation of the materials on record, cannot be ground for review of the order or for recall of the order by the Court or Tribunal who has passed such order. Those can perhaps be ground for appeal against such order.

6. It is also to be noted that order dated 24th July, 2008 was dictated and pronounced in the open Court in the presence of the Departmental Representative for the appellant and the learned Advocate for the respondents. It is not the case of the applicant that there was any attempt on the part of the Departmental Representative to point out that there was any actual mistake committed by the Tribunal while delivering the said order.

7. The finding regarding absence of the show cause notice relates to such notice to the manufacturer of the product. Admittedly, apart from reference to the issuance of such notice to the manufacturer in the order passed by the adjudicating authority, there was no material to confirm the said contention before the Tribunal at the time when the order in question was passed. A copy of the show cause notice in that regard issued to the manufacturer is placed for the first time before the Tribunal along with the present application. In such circumstances, no fault can be found with the said finding by the Tribunal and it cannot be said that the finding was incorrect.

8. As regards the other two grounds, they consequently relate to the assessment of the ~~raw~~ materials on record. Being so, if assuming that there was incorrect assessment of materials on record, that itself cannot be a ground for recalling of the order. As such challenge can be only by way of appeal to a higher authority.

9. For the reasons stated above, there being no case made out for recall of the order dated 24th July, 2008, the application is, therefore, dismissed.

(JUSTICE R.M.S. KHANDEPARKAR)
PRESIDENT

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