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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/3119 AND 3126 / 2006-SM[BR]

Date 25/08/2008

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

To :
M/S BHARAT ENGG. INDS.
P-3,INDUSTRIAL ESTATE,AZAMGARH(UP)

[2]M/S S. K. TARANSFORMERS PVT. LTD.
INDUSYRIAL ESTATE AZAMGARH [U.P]

M/S BHARAT ENGG. INDS. Appellant

Vs

C.C.E.ALLAHABAD Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1166 – 1167 / 2008 –SM[BR] dated 16.7.2008

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar

(SM Appeal Branch)

Copy to :

1. Respondent

C.C.E.ALLAHABAD

38,M.G. MARG,CIVIL LINE,ALLAHABAD.

2. Adv. / Consult

MR.S.P. OJHA

299, BAGHAMBARI HOUSING SCHEME, ALLAHPUR, ALLAHABAD, (UP)

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. Easy Service Tax Online Dot Com Pvt. Ltd. 407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad - 15
15. Office Copy
16. Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI

PRINCIPAL BENCH NEW DELHI

Appeals Nos.3119 and 3126 of 2006-SM (BR)

[Arising out of common Order-in-Appeal No.59/CE/Alld/2006 dated 19.05.2006 passed by the Commissioner of Central Excise (Appeals), Allahabad]

Date of Hearing/ Decision:16.07.2008

For approval and signature:

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

1. Whether Press Reporters may be allowed to see 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?	:	No.
3. Whether Their Lordships wish to see the fair copy of the Order?	:	
4. Whether Order is to be circulated to the Departmental authorities?	:	

(1) M/s. Bharat Engg. Industries
(2) M/s. S.K. Transformers Pvt. Ltd. ...Appellants
[Rep. by None.]

Vs.

CCE, Allahabad ...Respondent
[Rep. by Shri S. Gautam, DR]

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

Final Order No. 1166-1167/2008-SM(BR)/Dated:16.07.2008

Per P.K. Das:

Both the appeals are arising out of a common order and, therefore, both the appeals are taken up together for disposal.

2. After hearing the ld. DR and on perusal of written submissions filed by the Appellants, it is seen that the Appellants are engaged in the manufacture of transformer coils in their factory. They received old and damaged transformers for repair in their unit. A proceeding was initiated proposing imposition of penalty for violation of Rule 16(3) of the Central Excise Rules, 2002 on the ground that the Appellants had not taken general permission for undertaking such processes. The Adjudicating Authority dropped the proceedings for penal action under Rule 27 of the Central Excise Rules, 2002. Revenue filed appeal before the Commissioner (Appeals), whereby penalty of Rs.2,000/- each was imposed on the appellants.

3. The Commissioner (Appeals) observed that the procedure under Rule 16(3) of the Rules is mandatory to safeguard the Government's Revenue. It is seen that the Tribunal, in the case of M/s.Kailash Transformers & Others Vs. CCE, Allahabad vide Final Order No.629-630 and 630 A/2008-SM (BR) dated 11.03.2008 in respect of the other co-appellants, set aside the order of the Commissioner (Appeals) and restored the Adjudication Order. The relevant portions of the order of the Tribunal are reproduced below:-

"3. After hearing both sides and on perusal of the record, I find that the appellants are engaged in the manufacture of Transformers. They are not availing the Cenvat Credit on the old and used transformer received for repairing job. The Adjudicating Authority observed that the allegation in show cause notice is on the basis of Trade Notice No.72/2000 dated 1.8.2000 read with Rule 16(3) of Central Excise Rules, 2000 which has already been withdrawn. He proceeded on the basis of Trade Notice No.67/99 dated 3.11.99 wherein the Commissioner of Central Excise, Allahabad had issued a general permission for such activities. Rule 16(3) of the said Rules provides that if there is any difficulty in following the provisions of sub-rule (1) and (2) of the said Rules, the assessee may receive the goods for being re-made, re-fined, re-conditioned and may remove the goods subsequently subject to such condition as may be specified by the Commissioner. The Commissioner (Appeals) has observed that in terms of Rule 16(3) of the said Rules, the appellants had to seek permission from the Commissioner to receive the goods for being re-made but no authority was mentioned. I find that Rule 16 of the said Rules comes into play in respect of credit of duty on goods brought to the factory. In the present case, the appellant has not claimed credit on receipt of transformer for repair and therefore, Rule 16 of the said Rules is in applicable herein. Therefore, I do not agree with the finding of the Commissioner (Appeals). Accordingly, the adjudication orders are restored and the appeals are allowed."

discussion

4. In view of the above ~~position,~~ the impugned order is not sustainable. Accordingly, the order of the Commissioner (Appeals) is set aside and the order of the Adjudicating Authority is restored. Both the appeals are allowed with consequential relief.

Order dictated & pronounced in open court on 16.7.2008.

(P.K. Das)
Member (Judicial)

Ckp.