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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

Date 25/08/2008

Appeal No. E/400 /2006-SM[BR]

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

To :
M/S BHASKAR ISPAT P LTD.
1/1,CAMAC STREET,KOLKATA-16

M/S BHASKAR ISPAT P LTD. Appellant

Vs

C.C.E. RAIPUR Respondent

I am directed to transmit herewith a certified copy of **Final order** No. 1175 / 2008 –SM[BR] Dated 18.7.2008 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. RAIPUR
   CENTRAL EXCISE BUILDING, DHAMTARI ROAD, TIKRAPARA, RAIPUR 492001.
2. Adv. / Consult
   MR.K.K ANAND
   A-5,BASEMENT,LAJPAT NAGAR-III NEW DELHI-24
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

Appeal No.400 of 2006-SM (BR)

[Arising out of common Order-in-Appeal No.15-CE/RPR/APPL-I/2005 dated 30.08.2005 passed by the Commissioner of Central Excise (Appeals), Raipur-I]

Date of Hearing/ Decision:18.07.2008

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? :
3. Whether Their Lordships wish to see the fair copy of the Order? :
4. Whether Order is to be circulated to the Departmental authorities? :

M/s. Bhaskar Ispat Pvt. Ltd. ...Appellants

[Rep. by Hament Bajaj, Advocate]

Vs.

CCE, Raipur ...Respondent

[Rep. by Shri S. Kumar, DR]

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

Final Order No. 1175/2008-SM(BR)/Dated:18.07.2008

Per P.K. Das:

The relevant facts of the case, in brief, as per record, are that the Appellants are engaged in the manufacture of malleable cast iron inserts silicon grade classifiable under Chapter 73 of the Schedule to the Central Excise Tariff Act, 1985. The Appellants availed Deemed Modvat Credit amounting to Rs.1,88,440.00 under Notification No.58/97-CE dated 30.08.97. The Appellants availed the credit on the basis of central excise invoices issued by the suppliers. The invoices are showing "M.S. Flat Cuttings" under sub-heading No.7211.11. It has been alleged that the Appellants actually received the waste and scrap and they are not entitled to deemed credit. A show cause notice dated 10.05.99 was issued to the Appellants and the supplier of inputs alleging the mis-declaration of the goods by the supplier and denial of credit and imposition of penalty to the Appellant. The Adjudicating Authority dropped the proceedings against the suppliers and the Appellants. The Revenue filed appeals against the Appellants. No appeal was filed against the supplier of the goods. The Commissioner (Appeals) confirmed the demand of duty and imposed penalty of equal amount against the Appellants.

2. Ld. Advocate on behalf of the Appellant submits that the Adjudicating Authority dropped the proceedings after giving detailed reasoning. He further submits that no appeal was filed against the suppliers. He further submits that this Tribunal on identical issue in the case of M/s. Surya Alloy Industries Pvt. Ltd. Vs. CCE, Raipur vide Final Order No.827/08-SM (BR) dated 10.03.2008 set aside the impugned order and allowed the appeal with consequential relief.

3. Ld. DR on behalf of the Appellant reiterates the findings of the Commissioner (Appeals). He further submits that there is no material placed by the Appellants that no appeal was filed against the suppliers. He further submits that irregularity of wrong availment of Deemed Credit was established by the investigation and therefore, the Appellant is not entitled to avail Deemed Credit.

4. After hearing both the sides and on perusal of the records, it is seen from the impugned order that the Commissioner (Appeals) observed that no penalty can be imposed on the suppliers as they have not been made a party in the instant Revenue's appeal. So, the contention of the Ld. DR that the Appellant failed to establish that no appeal filed against the suppliers has not merit. In any event, I find that the Tribunal on the similar issue in the case of M/s. Surya Alloys Pvt. Ltd. (supra) set aside the impugned order. The relevant portion of the said order is reproduced below:-

> "4. After hearing both the sides and on perusal of the records, I find that show cause notice dated 11.5.99 proposed to disallow the Deemed Credit to the appellants on the ground that the supplier misdeclared the particulars in the invoice issued for excisable goods. It has also proposed to impose penalty under Rule 209 A of the Central excise Rules, 1944 for entering wilfully wrong and incorrect particulars issued for excisable goods. Notification No.58/97-CE dated 30.08.97 extended Deemed Credit on the inputs declared in the said Notification and the same shall be equivalent to the amount calculated at the rate of 12% of the price as declared by the

manufacturer, in the invoice accompanying the said inputs and credit of the deemed duty. Clause 5 of the said Notification provides that the provisions of this Notification shall not apply to inputs, where the manufacturer of the said inputs has not declared the invoice price of the said inputs correctly in the documents at the time of their clearance from their factory. In the present case, the show cause notice proposed that the manufacturer of the inputs declared the particulars of invoice wrongly and incorrectly. The adjudicating authority dropped the proceedings and he observed that the only fact is that the goods/inputs were subjected to melting cannot be the determining factor for classification under Chapter 7204.90. It cannot be considered that every article i.e. re-melting has to be taken under 7204.90. It is seen from the record that the Revenue has not filed any appeal against the manufacturer of inputs for alleged classification as proposed in the show cause notice. Thus, it appears that the Revenue has accepted the adjudication order insofar as it is concerned against the supplier of the inputs. Therefore, the allegation against the recipient of inputs (i.e. the appellants) is not sustainable. The Hon'ble Supreme Court in the case of Sarvesh Refractories (P) Ltd. (supra) held that the change of classification of the goods, at buyer's end is not permissible. The Tribunal in the case of Pawan Ispat Udyog (supra) allowed the credit because no proceeding was imitated against the manufacturer of inputs regarding mi-declaration of goods. In the present case, I find that the Revenue has not filed any appeal against the manufacturer of inputs. So, the classification of inputs at the buyer's end is not permissible. Accordingly, the impugned order is set aside and the appeal is allowed with consequential relief."

5. In view of the above discussions, 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. The appeal is allowed with consequential relief.

Order dictated & pronounced in open court on 18.7.2008.

(P.K. Das)
Member (Judicial)

Ckp.