(17)

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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/1394/2006-1395/2006-SM[BR] Date 29/08/2008

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

To :
THE COMMISSIONER OF CENTRAL EXCISE
CHANDIGARH
CENTRAL REVENUE BUILDING, SECTOR-17,
CHANDIGARH
THE COMMISSIONER OF CENTRAL EXCISE
CHANDIGARH Appellant

Vs

M/S OMID ENGINEERING PVT Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1224 – 1225 /2008 –SM[BR] dated 4.7.2008

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 OMID ENGINEERING PVT
VILLAGE & P.O. DEOLI, TEHSIL AMB, DISTT.- UNA (HP)

[2]M/S HIM CYLINDER PVT. LTD.
INDUSTRIAL AREA AMB DISTT; UNA[H.P]

2. Adv. / Consult SHRI K.K. ANAND ADV.
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)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R.K Puram, New Delhi-110066

COURT-IV

Date of hearing: 04.7.2008

Central Excise Appeal No. 1394-1395/2006-SM(BR)

[Arising out of the order-in-Appeal No. 14 & 15/CE/CHD/2006 dated 18.01.2006 passed by the Commissioner (A) Central Excise, Chandigarh]

For Approval and Signature:

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

	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	
	Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
	Whether their Lordships wish to see the fair copy of the Order?	
	Whether Order is to be circulated to the Departmental authorities?	

C.C.E. Chandigarh — Appellants

vs.

1. M/s Omid Engineering Pvt. Ltd. — Respondent
2. M/s Him Cylinders Pvt. Ltd.

Appearance:

Shri S.L. Meena, DR for the Appellant
Ms. Asmita Nayar, Advocate

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

Final Order No. 1224-1225/08-SM(BR)

Per: P.K. Das:

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

2. After heaing both the sides and on perusal of records, it is seen that the Adjudicating Authority denied credit on input Furnance Oil considering as L.D.O., which was set aside by Commissioner (Appeals). Hence, Revenue filed these appeals.

3. The main contention of the Ld. DR is that with effect from 01.3.2003. L.D.O. was excluded from the category of inputs. The Respondents were receving L.D.O. prior to 01.3.2003 and thereafter they received inputs from the same dealers under description of Furnace Oil and, therefore, Furnace Oil should be considered as L.D.O. and credit was correct by denied by Adjudicating Authority.

4. The Commissioner (Appeals) set aside Adjudication Orders. The finding of the Commissioner (Appeals) is as under:-

> "I have carefully examined the case records including the Appellants submissions made in writing and at the time of personal hearing and observe that as contended by the Appellants, the item in question has been classified by the supplier dealer as furnace oil and as per the manufacturers invoice as referred in dealers invoice the description of the product is also furnace oil. Thus there is no Iota of doubt about the fact that the product in question is only the Furnace oil. Moreover the department has not got the items chemical tested to prove its claim or has not made any independent inquiries to

prove that the item is not furnace oil. The Adjudicating Authority has merely gone by assumptions and presumptions to prove his contention. When he has admitted the fact in the order-in-original that both the items i.e LDO and Furnace Oil are similar in nature and classified under the same item, it was his duty to get it chemically tested to prove the doubt if any."

5. It is contended by Revenue in the grounds of appeals that there is change of nomenclature in the invoices from L.D.O. to Furnace Oil soley to avail cenvat beinefit. I agree, with the finding of Commissioner (Appeals) that the allegations are without any basis and no enquiry was made at dealer/supplier and/or the Respondent. So, I do not nor find any merit in the appeals of Revenue. The apeals are rejected.

(Dictated and pronounced in the open court.)

(P.K. Das)
Member (Judicial)

K. Gupta