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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/2215/2006 – SM[BR] Date 19/11/2008

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

To :
CCE,RAIPUR

CE BHAWAN TIKRAPARA,RAIPUR(CG)

CCE,RAIPUR Appellant

Vs

M/S KUNAL PIPES INDIA P LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1484 / 2008 - **SM[BR]** dated 14.11 .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 KUNAL PIPES INDIA P LTD.

6BORIA GROWTH CENTRE RASMADA,DISTT DURG(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 - 3
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
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-1
15 Office Copy
16 Guard file

Assistant Registrar

(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. III

Excise Appeal No. 2215 of 2006-SM

[Arising out of Order-in-Appeal No. 39/RPR-II/2006 dated 21.4.2006 passed by Commissioner (Appeals I) Customs & Central Excise, Raipur]

For approval and signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)

1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	:	No
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?	:	Seen
4. Whether Order is to be circulated to the Departmental authorities?	:	Yes

Commissioner of Customs & Central Excise, Raipur — Appellant

Vs.

M/s. Kunal Pipes (India) P. Ltd. — Respondent

Appearance:

Mr. Sansar Chand, DR for the Appellant
None for the Respondent

CORAM:

Hon'ble Mr. M. Veeraiyan, Member (Technical)

Date of Decision : 14.11.2008

Find **ORDER NO. 1484/08-SM(BR)**

Per M. Veeraiyan:

This is an appeal by the Department against the order of the Commissioner (Appeals) No. 39/RPR-II/2006 dated 21.4.2006, by which the order of the original authority allowing credit of Rs.1,00,533/- was upheld by him.

2. None appears for the respondents. Heard learned DR. In this case the relevant duty paying documents based on which credit could be taken were reportedly lost and an FIR has been filed by the respondents about loss of documents. However, verification of the Range Superintendent confirmed the duty paying nature , name of the consignee, commodity, quantity received by the respondent. On the basis of the report by the Superintendent the original authority allowed the credit.

3. The said decision has been confirmed by the Commissioner (Appeals) with the following findings:-

> "5. I have gone through the grounds of review and all other evidence on record. There is no dispute that the goods have been received by the respondents in the factory. So also there is no dispute on the duty paid character of the goods. Further, such goods have been used by the respondents, in or in relation to the manufacture of the final goods. The question, thus, for decision is whether the respondents could have been taken credit on the basis of the extra copies of the invoices when both original and duplicate copies of the invoices had been lost. To cover up the lapses, the respondents subsequently lodged complaints with the police and also filed affidavits to the effect regarding the loss of invoices. The fact remains that it is the lower authority who has to condone the lapses and grant permission for availment of credit.

This has been done by the lower authority under the impugned order and under this he has allowed the credit. Since these were only procedural lapses, he rightly held that substantive benefit could not have been denied. Therefore the lower authority rightly allowed the Credit. I, therefore, do not see any infirmity in the order of the lower authority. For these reasons, the Review Application is rejected."

4. The learned DR reiterates the grounds of appeal. He also relied upon the decision of the Tribunal in the case of Ratnamani Metals and Tubes Ltd. vs. CCE, Vadodara [2004 (175) ELT 308 (Tri- Mum)].

5. I have carefully considered the submissions made by the learned DR and also perused the records. In the light of factual finding confirming the duty paid nature and receipt of the goods by the order of the original authority as well as by Commissioner (Appeals), I do not find any ground to interfere with the order of the Commissioner (Appeals).

6. The appeal is, therefore, rejected.

(Pronounced in the open Court)

(M. Veeraiyan)
Member(Technical)

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