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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/5884/2004 – SM[BR] Date 26/11/2008

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

To :
C.C.E. MEERUT II
OPP. SAHEED PARK (NEAR ASHOK KI LAT) DELHI
ROAD, MEERUT (UP)

C.C.E. MEERUT II Appellant

Vs

M/S PARAS FOAM INDUSTRIES Respondent

I am directed to transmit herewith a certified copy of **Final order No 1517 / 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 PARAS FOAM INDUSTRIES
   MEERUT ROAD, HAPUR, DISTT. GHAZIABAD
2. Adv. / Consult
   MR.BIPIN GARG
   B-1/1289,A-VASANT KUNJ, NEW DELHI
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. 5884 of 2004-SM

[Arising out of Order-in-Appeal No. 212/CE/MRT II/2004 dated 15.9.2004 passed by Commissioner (Appeals), Customs & Central Excise, Meerut II]

For approval and signature:

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

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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? : NO
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : Yes
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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Commissioner of Central Excise Meerut II — Appellant

Vs.

M/s. Paras Foam Industries. — Respondent

Appearance:

Mr. Sansar Chand, DR for the Appellant
Mr. Atul Gupta, Co. Secretary for the Respondent

CORAM:

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

Date of Hearing : 14.11.2008
Date of Decision: 14.11.2008

Final ORDER NO. 1517/08-SM(BR)

Per M. Veeraiyan:

This is an appeal filed by the department against the order of the Commissioner (Appeals) No. 212/CE/MRT II/2004 dated 15.9.04 by which the order of the Deputy Commissioner dated 31.10.01 dropping the demand was upheld.

2. Heard both sides.

3. Relevant facts, in brief, are as follows:

a) There was a fire in the respondent's factory at 7.30 PM on 22.5.2000 and some finished goods as well as inputs were destroyed. The credit involved on the inputs is determined as Rs.53,336/- and duty involved on the finished goods as Rs.23,229/-.

b) On 23.5.2000, the respondents intimated the jurisdictional Central Excise authorities and on the very same day, it appears that Superintendent had visited the factory and made out a report to the higher authorities about the fire, extent and damage which had arisen thereof.

c) A show cause notice dated 24.3.01 was issued by the Deputy Commissioner proposing recovery of the duty on the finished goods and inputs lost in the fire. However, taking into consideration reply and the submissions, at the personal hearing, passed an order dropping the proceedings. Said order of the Deputy Commissioner was upheld by the Commissioner (Appeals).

4. Learned DR submits that Deputy Commissioner has no powers under erstwhile Rule 49 of the Central Excise Rules, 1944 to remit the duty. The respondents has not made any application to the Commissioner of Central

Excise who only is competent to grant the remission. Under these circumstances, the order of the Deputy Commissioner dropping the demand is not legal. Therefore, in the absence of remission order of the Commissioner, the order of the Commissioner (Appeals) upholding the order of the Deputy Commissioner is also not legal. He also submits that no remission under Rule 49 can be granted to the Cenvat credit taken on inputs. He relies on the decision of the Tribunal in the case of CCE vs. Govind Sugar Mills Ltd. [1992 (58) ELT 209 (Tri)].

5. Learned Company Secretary submits that there was fire in the factory and the goods were destroyed. They have promptly intimated the department about the fire and consequent damage and the same has been verified by the jurisdictional Central Excise authorities. The purpose of intimation was only to seek remission of duty. Instead of granting remission, they were issued with show cause notice. However, the Deputy Commissioner accepting the genuineness of the claim has dropped the proceedings which is upheld by the Commissioner (Appeals).

6. I have carefully considered the submissions made from both the sides. When there was an unfortunate event of fire and consequent damage, the respondents has promptly intimated the same to the jurisdictional Central Excise authorities. Hence it is expected that the assessee is guided to seek remission from the competent authorities. However, the Deputy Commissioner chose to issue a show cause notice. While deciding the show cause notice, he felt that remission is permissible. As he was not competent to grant the remission and only the Commissioner was competent to, he could have referred the matter to the Commissioner recommending such remission. Perhaps not knowing that he had no powers of remission, he had chosen to decide the demand notice on merits.

Commissioner (Appeals) has endorsed the said order. However, learned DR has raised a valid point that the remission under Rule 49 may not be applicable to the inputs on which credit has been taken by them.

6.2 Inasmuch as the occurrence of fire and consequent damage is not in dispute, it should be appropriate that the remission is considered by the competent authority. With this in mind, I set aside the orders of both the authorities and direct that letter dated 23.5.2000 may be treated as application for seeking remission of duty and accordingly decided by the Commissioner. The respondent is directed to make available the details within 45 days from the date of receipt of order. Commissioner may seek necessary further details from the respondents in this regard.

(b) This order is being passed after appreciating that there was no time limit for seeking remission and that the intention of their written intimation to the jurisdictional officer about the fire was to seek remission and there was mis-understanding on the part of the jurisdictional authorities about their powers regarding remission.

The appeal is disposed of on the above terms.

(Pronounced in the open Court)

(M. Veeraiyan)
Member(Technical)

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