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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/1234/2007 – SM[BR] &E/CO/141/2007 Date 17/12/2008

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

To :
C.C.E. DELHI III

UDYOG MINAR, UDYOG VIHAR, VANIJYA NIKUNJ,
PHASE V, GURGAON - 122016 (HARYANA)

C.C.E. DELHI III Appellant

Vs

M/S LAXAMAN TOOLS PVT. LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1602 / 2008- SM[BR] dated 8.12.2008

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 LAXAMAN TOOLS PVT. LTD.

VILLAGE-BAROTA, SOHANA GURGAON, (HARYANA)

2. Adv. / Consult SHRI RAKESH BHOLA ADV.
C/O M/S TAX POINT, 899 SECTOR 17B,
URBAN ESTATE, GURGAON [HARYANA]

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

E/1234/2007-SM & E/CO/141/07

[Arising out of Order-in-Appeal No.46/SSS/GGN/07 dt.20.3.07 passed by the Commissioner(Appeals),Delhi-III,Gurgaon)

Hon'ble Mr. RAKESH KUMAR, 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?

2. Whether it would 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 Department Authorities: :

CCE, Delhi-III,Gurgaon Appellant

Versus

M/s. Laxman Tools Pvt. Ltd. Respondent

Appearance

Shri S.Gautam, Authorised Departmental Representative(DR) For Appellant
Shri Rakesh Bhola, Adv. for respondent

Coram: Hon'ble Mr. RAKESH KUMAR, MEMBER (TECHNICAL)

Date of decision: 8.12.08
Final Order No. 1602/08-SM(BR)

Per Rakesh Kumar:

The Joint Commissioner vide order-in-original dt.5.4.06 dropped the duty demand of Rs.5,15,544/- in respect of shortage cenvated raw materials detected at the time of officers visited to the respondent's factory on 3.8.04. In the same order he also confirmed the duty demand of Rs.5,04,328/- in respect of clearance of finished products without payment of duty in the guise of job work and besides imposed penalty of Rs.5,12,421/- on the respondent under Section 11AC. The Revenue filed a review appeal before Commissioner(Appeals) against the part of the Joint Commissioner's order dropping the duty demand of Rs.5,15,544/- on the shortage of the raw-material in respect of Cenvat credit have been taken. The Commissioner(Appeals) vide the impugned order-in-appeal dt.22.3.07 dismissed the Department's review appeal and upheld the Joint Commissioner's order. It is against this order that Revenue has filed the present appeal.

2. Heard both the sides.

2.1 Ld. DR pleaded that the respondent has failed to explain the shortage of the inputs in respect of the Cenvat credit has been taken and therefore, they are liable to pay the duty in respect of the same and that the Commissioner(Appeals) has wrongly upheld the Jt. Commissioner's order dropping the duty demand.

2.2. Shri Rakesh Bhola, Advocate, Ld. Counsel for the respondent pleaded that as is clear from the findings in the impugned order, at the time of officer's visit to the factory premises on 3.8.04, the RG.23A Part I Register was not up-to-date - while the entries regarding the receipts had been made upto 31.7.04, the entries regarding the issue of raw-material for manufacturing had been made upto 30.6.04 and that on the basis of such incomplete record, it cannot be said as to whether there was any shortage of the raw-material. He also pleaded that the Revenue has not come up with any evidence regarding the clandestine removal of the raw-material which is alleged to be short.

3. I have carefully considered the submissions from both the sides. The officers had visited the unit on 3.8.04. Admittedly at that time in RG.23A Part I register while the entries regarding the receipt of the raw-materials had

been made upto 31.7.04, the entries regarding the issue of raw-material for manufacture of finished goods had been completed upto 30.6.04. In view of incomplete RG.23A Part I register, it is not correct to say as to whether or not there was shortage of the raw-material. A correct finding in this regard is possible only when on the basis of the documents regarding receipt of the raw-material and the issue of raw-material, the RG.23A Part I register is updated upto the date of the officers' visited to the factory i.e. upto 3.8.04, the balance of raw-material is determined and it is that balance which has to be compared with the actual stock found. From the perusal of the order-in-original and the impugned order-in-appeal, it is clear that this exercise has not been done. The impugned order, therefore, is set aside and the matter is remanded to the original adjudicating authority for getting the RG.23A Part.I register updated on the basis of records regarding the receipt and issue of the raw-material and determining whether or not there was shortage of the cenvated raw-material and if there was indeed shortage, denovo adjudication in this matter after hearing the respondent. The Revenue's appeal stands disposed of as above.

Order dictated and pronounced in the open Court.

(Rakesh Kumar)
Member Technical

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