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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/1072/2006-SM[BR] Date 09/04/2008

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

To :
M/S SHREE RADHE INDUSTRIES LTD.
VILL-SHILPAHARI NEAR SIRGITTI INDUSTIRIAL
AREA,BILASPUR (C.G.)
M/S SHREE RADHE INDUSTRIES LTD. Appellant

Vs

C.C.E. RAIPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 608 /2008-SM[BR] dated 4.2.2008

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.RAMESH NAIR
   LAKSHMI VIHAR, AG- 192, SCHEME NO. 54, VIJAYNAGAR, INDORE(MP)
3. S.D.R.
4. ~~J.C.D.R.~~
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, marg. 43, saket, New
7. M/s Centax Publictions (P) Ltd., 1512-E, Bhishm Pitamah
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301
9. R.Venkatraman Constt. 44-B, S.Suncity, Ghaziabad -
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh,
12. Co, Law Institution
13. TAX INDIA, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, R.K. PURAM, W.B. NO.2, PRINCIPAL BENCH
NEW DELHI, COURT NO. III

Appeal No.E/1072 of 2006-SM (BR)

[Arising out of order in appeal No.140/RPR-I/2005 dated 17.11.2005 of the Commissioner of Central Excise (Appeals), Raipur (CG).]

Date of Hearing/ Decision:4.2.2008

For approval and signature:

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

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?	:	
4. Whether Order is to be circulated to the Departmental authorities?	:	

M/s. Shree Radhe Industries Ltd. ...Appellants
[Rep. by Mr. Ramesh Nair, Advocate.]

Vs.

CCE, Raipur Respondent
[Rep. by Mr. A.K. Rastogi, Authorized Representative (DR)]

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

Final Order No.608/08-SM(BR) Dated:4.2.2008

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Per P.K. Das:

The appellant filed this appeal against rejection of the refund claim on the ground of unjust enrichment.

2. The relevant facts of the case, in brief, are that the appellants are engaged in the manufacture of sponge iron classifiable under Chapter 72 of the Schedule to the Central Excise Tariff Act, 1985. Vide Notification No.16/2004 dated 28.2.2004 rate of duty was reduced from @ 16% Adv. to 8% Adv. The appellant cleared the goods on budget day and on the next day at the old rate of duty. Therefore, they filed a refund claim of excess amount of duty paid by them. The adjudicating authority sanctioned refund claim. Revenue filed an appeal before the Commissioner (Appeals). By the impugned order, the Commissioner (Appeals) allowed the appeal of the Revenue and rejected the refund claim on the ground of unjust enrichment.

3. Ld. Advocate on behalf of the appellant submits that it is revealed from the adjudication order that the adjudicating authority allowed the refund claim after examining the certificate of Superintendent as well as credit notes. He relied upon the decision of the Hon'ble Punjab & Haryana High Court in the case of Commissioner of Central Excise, Ludhiana Vs. Bharat Box Factory Ltd. Reported in 2007 (218) ELT 355 (P & H). He also relied upon the decision of the Tribunal in the case of Commissioner of

Central Excise, Belgaum Vs. Gokak Mills Ltd. Reported in 2007 (212) ELT 56 (T-B).

4. Ld. DR on behalf of the Revenue reiterates the findings of the Commissioner (Appeals). He submits that the credit notes are not sufficient to establish that the duty incidence has not been passed to any person.

5. After hearing both the sides and on perusal of the records, I find from the adjudication order that the Superintendent of Central Excise issued certificate that the consignee had not availed the credit of the excise amount of duty. Further, the adjudicating authority examined the credit notes issued by the appellants to the consignee of the goods. It is seen that there is no dispute that the duty incidence was not availed by the customers as Cenvat credit. The Hon'ble Punjab & Haryana High Court in the case of Bharat Box Factory Ltd. (supra) rejected the Revenue's appeal on the question as under:-

> "Whether post-clearance adjustment like issuance of credit notes by the assessee who is claiming refund, to buyers of the goods, taking back the burden of duty on the goods would help the assessee to get over the bar of unjust enrichment under Section 11B of the Central Excise Act, 1944?

The Tribunal in the case of Gokak Mills Ltd. (supra) held that the assessee is eligible for refund when the credit note issued by the assessee but the transaction was on provisionality and the amounts were settled in the end and higher payment made by the assessee. In the instant case, I find that the consignee had not availed the credit of the excess amount of duty paid by the appellant as revealed from the certificate of the jurisdictional Superintendent of Central Excise. The adjudicating authority also examined the credit notes and, therefore, the order of the Commissioner (Appeals) is set aside and the order of the adjudicating authority is restored. The appeal is allowed.

Order dictated & pronounced in open court on 4.2.08.

(P.K. Das)
Member (Judicial)

Ckp.