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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/3414/2005-SM[BR] Date 10/04/2008

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

To :
SREECHEM RESINS LTD.
VILLAGE DURRANURA, RAIGARH, C.G.

SREECHEM RESINS LTD. Appellant
Vs
C.C.E. RAIPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 615 /2008 –SM[BR] dated 20.3.2008 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
   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 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. Office Copy
15. Guard file

Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO.II

E/Appeal No.3414 /2005-SM

(Arising out of order in appeal No.429/RPR.I/03 dated 11.9.2003 passed by the Commissioner of Central Excise (Appeals), Raipur)

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?
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?

No.

M/s Shreechem Resins Ltd — Appellant (Rep. by none)

Vs

CCE, Raipur — Respondent (Rep. by Shri Rajmal, DR)

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

Date of Hearing: 20.3.2008

Final Order No. 615 /2008-SM(BR)

Per P.K. Das:

None appeared on behalf of the appellants. By letter dated 10.3.2008, the appellants have requested to decide the matter in their absence on the basis of written submissions.

2. Heard the learned DR on behalf of the Revenue and perused the records.

3. It is seen from the order of the Commissioner (Appeals) that the appellants availed credit on the basis of original copy of invoice. The Commissioner (Appeals) observed that there was a dispute as to whether the appellants received the inputs in question in their factory. The appellants in their written submissions have stated as under:-

ii) The Commissioner (Appeals) failed in appreciation of facts while passing the impugned order, inter alia holding and/or observing that the fact of receipt of disputed Phenol initially on

28.01.1999 and subsequently again on 30.06.1999, consequent upon Joint Inspection and test of the said goods initially rejected were doubtful and contradictory to as much as this was not substantiated by production of any statutory record of rejected material or returned material to that effect. It was confirmed by Range Superintendent of Central Excise on verification of the records of the manufacturer-supplier (Hindustan Organic Chemicals Ltd.) that there was no evidence of return of the said material (Annexure enclosed marked "A"). The fact, however, was that the disputed Phenol (a hazardous chemical) received initially on 28.01.1999, transported by Tanker Lorry, was rejected and got discharged in barrels, on the request of the Dealer, M/s. Larsen Service Trading Co. through whom the material was received and kept stored separately in one corner of the Appellant's Plant and was finally accepted on 23.06.1999 (Page – 16) after Joint Inspection and test and the same was accounted for in RG 23A (Part-I) and corresponding Modvat credit was taken on 30.06.1999 (i,e, within 6 months from the date of payment of duty) (Page – 19). All these facts were brought to the knowledge of the Assistant Commissioner, Central Excise, Bilaspur (C.G.) with supporting documents, with a prayer for allowing credit on the strength of the "Original Copy of the Invoice as the Duplicate for Transporter's" copy was lost in transit, for which an F.I.R. was lodged in the local Police Station. (Copy enclosed vide Page-17).

4. I find that the above fact of the receipt of inputs by the appellants was not examined by the lower authorities. Accordingly, I set aside the impugned order and the matter is remanded back to the Adjudicating Authority to examine the evidences as contended by the appellants and to pass fresh de-novo order in accordance with law. Needless to say, the appellant shall be given proper opportunity of hearing before passing the order. The appeal is allowed by way of remand.

(Order dictated and pronounced in the open Court).

(P.K. Das)
Member(Judicial)

MPS*