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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/3089 -3091 /2006 –SM[BR] Date 15/04/2008

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

To :
M/S KAILASH TRANSFORMERS
TRANSFORMERS AZAMGARH(UP)

[2]M/S MURLI COLD STORAG AND ICE FACTORY [TRANSFORMER] DIVISION] BELISA AZAMGARH [U.P]
[3] M/SM.P. ELECTRO CRAFTS PVT. LTD.
BELAISA. AZAMGARH [U.P]

M/S KAILASH TRANSFORMERS Appellant

Vs

C.C.E.ALLAHABAD Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 629 -630 /2008-SM[BR] dated 11.3.2008 & 630/A

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.ALLAHABAD

38,M.G.MARG,CIVIL LINE,ALLAHABAD

2. Adv. / Consult

MR.S.P. OJHA

299, BAGHAMBARI HOUSING SCHEME, ALLAHPUR, ALLAHABAD, (UP)

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.3089-91 /2006-SM

(Arising out of order in appeal No.59/CE/Alld/06 dated 19.5.06 passed by the Commissioner of Central Excise (Appeals), Allahabad)

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?

Ns

M/s Kailash Transformers & Others — Appellant
(Rep. by Shri S.P. Ozha, Consultant)

Vs

CCE, Allahabad — Respondent
(Rep. by Ms. Archana Pandey Mittal, Jt. CDR)

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

Date of Hearing: 11.3.2008

Final Order No. 629-630 /2008-SM(BR)
& 630A

Per P.K. Das:

The appellants filed these appeals against the imposition of penalty under Rule 27 of the Central Excise Rules, 2002.

2. The relevant facts of the case in brief are that the appellants are engaged in the manufacturer of Transformer Coils at their factory. They are also undertaking the repairing of transformers at their factory. It has been alleged that the appellants failed to seek permission from the Commissioner for repairing of transformers in terms of Rule 16(3) of the Central Excise Rules, 2002. The Adjudicating Authority dropped the proceedings for penal action under Rule 27 of the Central Excise Rules, 2002. The Revenue filed appeal before the Commissioner (Appeals) whereby penalty of Rs. 2,000/- under Rule 27 of the said Rules was imposed on each of the appellants.

3. After hearing both sides and on perusal of the record, I find that the appellants are engaged in the manufacturer of Transformers. They are not availing the Cenvat credit on the old and used transformer received for repairing job. The Adjudicating Authority observed that the allegation in show cause notice is on the basis of Trade Notice No. 72/2000 dated 1.8.2000 read with Rule 16(3) of Central Excise Rules, 2000 which has already been withdrawn. He proceeded on the basis of Trade Notice No. 67/99 dated 3.11.99 wherein the Commissioner of Central Excise, Allahabad had issued a general permission for such activities. Rule 16(3) of the said Rules provides that if there is any difficulty in following the provisions of sub-rule (1) and (2) of the said Rules, the assessee may receive the goods for being re-made, re-fined, re-conditioned and may remove the goods subsequently subject to such condition as may be specified by the Commissioner. The Commissioner (Appeals) has observed that in terms of Rule 16(3) of the said Rules, the appellants had to seek permission from the Commissioner to receive the goods for being re-made but no authority was

mentioned. I find that Rule 16 of the said Rules comes into play in respect of credit of duty on goods brought to the factory. In the present case, the appellant has not claimed credit on receipt of transformer for repair and therefore, Rule 16 of the said Rules is in applicable. Therefore, I do not agree with the finding of the Commissioner (Appeals). Accordingly, the adjudication orders are restored and the ~~appellants~~ appeals are allowed.

(Order dictated and pronounced in the open Court).

(P.K. Das)
Member(Judicial)

MPS*