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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/3654/2006-SM[BR] Date 15/04/2008

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

To :
M/S RAJ KESARI ELECTRODES PVT LTD
F-313, ROAD NO 12, MIA, MADRI, UDAIPUR.

M/S RAJ KESARI ELECTRODES PVT LTD Appellant
Vs
C.C.E.JAIPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 632 /2008 –SM[BR] dated 5.2.2008 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.JAIPUR
   NCRB, STATUE CIRCLE, C-SCHEME, JAIPUR.
2. Adv. / Consult SHRI BIPIN GARG ADV.
   B-1 /1289-A, VASANT KUNJ NEW DELHI-70
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.3654/2006 -SM

(Arising out of order in appeal No.465/HKS/CE/JPR.II/06 dated 17.8.06passed by the Commissioner of Central Excise (Appeals), Jaipur)

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 Raj Kesari Electrodes Pvt Ltd — Appellant
(Rep. by Shri Bipin Garg, Advocate)

Vs

CCE, Jaipur — Respondent
(Rep. by Shri S. Gautam, DR)

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

Date of Hearing: 5 .2.2008

Final Order No. 632 /2008-SM(BR)

Per P.K. Das:

The relevant facts of the case, in brief, are that the original manufacturer M/s SAIL paid duty @ 8% Ad-valorem. M/s ABS Steel Ltd, registered under Central Excise as 'manufacturer' purchased the goods from

M/s SAIL and cleared the said goods on payment of duty @ 12% Ad-valorem to M/s D.M. Engg Ltd. a registered dealer. The appellant purchased the goods from registered dealer and availed credit @ 12% Ad-valorem on the said goods. It has been held by both the authorities below that the appellants are eligible to take credit @ 8% Ad-valorem as paid by the original manufacturer and not @ 12% Ad-valorem as paid by M/s ABS Steel Ltd.

2. After hearing both the sides and on perusal of record, it is seen that Commissioner (Appeals) observed that the appellants are not eligible to avail credit @ 12% Ad-valorem because Rule 3(1)(i) of Cenvat Credit Rules provides that the manufacturer or producer of final products shall be allowed to take credit of the duty of excise specified in the First Schedule to the Tariff Act, leviable under the Act. I find that sub-rule 1 of Rule 9 of Cenvat Credit Rules provides that cenvat credit shall be taken by the manufacturer on the basis of documents specified therein. In this case, there is no dispute that the appellants availed credit on the basis of invoices issued by registered dealer as prescribed in the said Rule and duty was paid @ 12% Ad-Valorem by M/s ABS Steel Ltd. The Tribunal in the case of Eveready Industries (I) Ltd Vs CCE Allahabad reported in 1998 (103) ELT 672 held that Central Excise authorities having jurisdiction over the manufacturers of final products cannot challenge assessments made by Central Excise officers having jurisdiction over the input supplier. In this case, the appellants availed credit on the basis of invoice of the registered dealer and payment of duty @ 12% ad-valorem is not disputed. Therefore, I do not find any reason

for denial of credit. Accordingly, the impugned order is set aside and the appeal is allowed with consequential relief.

(Order dictated and pronounced in the open Court).

(P.K. Das)
Member(Judicial)

MPS*