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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/174 /2006-SM[BR] Date 09/05/2008

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

To :
M/S A INFRASTRUCTURE LIMITED
(FORMERLY SHREE PIPES LIMITED), HAMIRGARH,
CHITTOR ROAD, BHILWARA
M/S A INFRASTRUCTURE LIMITED Appellant

Vs

THE COMMISSIONER OF CENTRAL EXCISE JAIPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 721 /2008 –SM[BR] dated 14.3.2008 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   THE COMMISSIONER OF CENTRAL EXCISE JAIPUR
   NCR BUILDING, STATUE CIRCULAR, C-SCHEME, JAIPUR
2. Adv. / Consult
   MR.L.P. ASTHANA & MS REENA KHAIR
   R-163, SECOND FLOOR, GREATER KAILASH-1, NEW DELHI - 110 048.
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.174 /2006-SM

(Arising out of order in original No.576/HKS/CE/JPR.II/05 dated 28th October, 2005 passed by the Commissioner of Central Excise (Appeals), Jaipur)

M/s A. Infrastructure Ltd — Appellant
(Rep. by Ms. Reema Khair, Advocate)

Vs

CCE, Jaipur — Respondent
(Rep. by Shri A.K. Rastogi, DR)

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

Date of Hearing: 14.3.08

Final Order No. 721 /2008-SM(BR)

Per P.K. Das:

The Appellants filed this appeal against the denial of credit on endorsed Bill of Entry.

2. After hearing both the sides and on perusal of record, I find that one M/s Kanoria Sugar & General Manufacturing Co. Ltd imported Felts and endorsed the Bill of Entry in the name of the appellants. The Commissioner (Appeals) observed that the Cenvat credit is not available on the basis of endorsed Bill of Entry and followed the Larger Bench decision in the case of Balmer Lawrie & Co Ltd Vs CCE Kanpur reported in 2000 (116) ELT 364. The learned Advocate on behalf of the appellants submits that the Hon'ble Bombay High Court in the case of Marmagoa Steel Ltd Vs Union of India reported in 2005 (192) ELT 82 (Bom) held that for availing the credit of duty what is required to be established under the Rule is that inputs received

in fact were duty paid. It has also been observed that credit cannot be denied on the ground of endorsed Bill of Entry.

3. It is seen that the decision of the Larger Bench of the Tribunal was distinguished on the basis of facts. I find that the matter is required to be examined on facts and in the light of the decision of the Hon'ble Bombay High Court. Accordingly, the impugned order is set aside and the matter is remanded back to the Adjudicating Authority to decide the matter in the light of the Bombay High Court in accordance with law. The appeal is allowed by way of remand.

(Order dictated and pronounced in the open Court).

(P.K. Das)
Member(Judicial)

MPS*