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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/2320/2006-SM[BR] Date 12/05/2008

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

To :
M/S SHIVA STEELS (UNIT-II)
C-237, MIA, BASNI, PHASE-II, JODHPUR

M/S SHIVA STEELS (UNIT-II) Appellant
Vs
C.C.E. JAIPUR II Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 742 /2008 –SM[BR] dated 27.2.2008 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 II
   N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.
2. Adv. / Consult
   MR.OM P.AGARWAL & CO.
   56, SECTION 7, N.P.H ROAD, JODHPUR(RAJ)
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)

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

E/Appeal No.2320/2006-SM

(Arising out of order in appeal No.199/HKS/CE/JPR.II/06 dated 12.4.06 passed 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 Shiva Steels — Appellant (Rep. by Shri O.P. Agarwal, C.A.)

Vs

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

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

Date of Hearing: 27.2.2008

Final Order No. 742 /2008-SM(BR)

Per P.K. Das:

The relevant facts of the case in brief are that the appellants are engaged in the manufacture of dutiable final products i.e. Stainless Steel, Cold-rolled Patta under sub heading 7219.90 and exempted goods i.e.

Stainless Steel scrap under sub heading 7204 and availed Cenvat credit on the inputs mainly SS Flats and other inputs used in the manufacture of dutiable and exempted products. Show cause notice was issued for reversal of amount under Rule 6 of the Central Excise Rules, 2002 as the duty paid inputs were used in the manufacture of exempted goods namely SS scrap. It has alsobeen proposed recovery of the amount collected from their customers in the guise of Central Excise duty in terms of Section 11-D of the Central Excise Act, 1944. The Adjudicating Authority confirmed the demand of duty on both score and imposed penalty. The Commissioner (Appeals) set aside the recovery of amount under Rule 6(3) of Central Excise Rules, 2002. The Commissioner (Appeals) upheld the confirmation of demand of Rs.1,60,833/- under Section 11-D of Central Excsie Act, 1944 and reduced penalty to Rs.1,00,000/-.

2. The learned Advocate on behalf of the appellants placed a copy of the invoice showing the goods were cleared on payment of 8% of the amount of value. He submits that the appellants paid the duty on fortnightly/monthly basis and debited the duty from Cenvat account and therefore, Section 11D cannot be attracted. He relied upon the decision of the Tribunal in the case of Inductotherm (India) Pvt Ltd Vs CCE Ahmedabad reported in 2007 (216) ELT 40.

3. The learned DR reiterates the findings of the Commissioner (Appeals). He submits that the SS scrap is chargeable to nil duty and the appellant realised the duty from the customers and therefore, Section 11-D is applicable. He also submits that Section 11-D payment is liable to be made through PLA and not from the Cenvat account.

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4. After hearing both the sides and on perusal of record, I find that the appellants cleared SS scrap on payment of duty at the rate of 8% as evident from the invoice. It is seen that the duty was discharged as fortnightly/monthly basis from PLA/Cenvat account. The Tribunal in the case of Inductotherm (India) Pvt Ltd (Supra) held that when the assessee proved the fact that during the relevant period, they deposited the amount by making debit entry in the Cenvat account and discharged the duty liability, demand under Section 11-D of the Act is not sustainable. The relevant portion of the said decision is reproduced below:-

"*On the plain reading of the above reproduced section, it can be seen that this section can be brought into play to demand the duty only when the assessee has collected excess amount in the guise of excise duty from his purchasers and has not deposited the same with the Government of India. In the present case, the issue is not so. It is on record and undisputed that the amount of duty is indicated on the invoices, during the relevant period, has been deposited by the appellant by making a debit entry in the Cenvat credit account. It is settled law that debits made in Cenvat credit account is discharge of the duty liability by the assessee. Since the provisions of Section 11-D are not at all applicable in the present case, we find that the impugned order is liable to be set aside and we do so.*"

5. In view of the above decision of the Tribunal, I find that in the present case, the appellants cleared the SS scrap on payment of duty as is evident from the invoice and debited duty from PLA/Cenvat account. Therefore, the submission of the learned DR is without any substance. I find that the present case squarely is covered by the above case of Inductotherm (India) Pvt Ltd (Supra). Accordingly, the impugned order in so far as recovery of

the amount under Section 11-D of the Central Excise Act, 1944 and penalty are set aside. The appeal is allowed.

(Order dictated and pronounced in the open Court).

(P.K. Das)
Member(Judicial)

MPS*