(16)

TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

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/3575/2006-3576/2006-SM[BR] Date 14/05/2008

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

To :
C.C.E. CHANDIGARH
PLOT NO 19, SECTOR 17-C, CHANDIGARH.

C.C.E. CHANDIGARH Appellant

Vs

M/S JYOTI CONCAST LIMITED Respondent

I am directed to transmit herewith a certified copy of **Final order No 763 -764 /2008 –SM[BR]**. dated 5.5.2008

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar

(SM Appeal Branch)

Copy to :

1. Respondent

1. M/S JYOTI CONCAST LIMITED
2. SHRI HUKAM CHANDBANSAL, MANAGING DIRECTOR
G.T.ROAD, MANDI GOBINDGARH.

2. Adv. / Consult SHRI GAGAN KOHLI ADV.
394, SECTOR 30A, CHANDIGARH

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)

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

Excise Appeal No. 3575-3576 of 2006-SM(BR)

(Arising out of Order-in-Appeal No. 708-709/CE/CHD/06 dated 14.8. 06 passed by the Commissioner (Appeals), Central Excise, Chandigarh)

For approval and signature

HON'BLE MR. S.S. KANG, VICE PRESIDENT

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 would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
3.	Whether their Lordships wish to see the fair copy of the order?	
4.	Whether order is to be circulated to the Departmental authorities.	

CCE, Chandigarh — Appellant

Vs.

M/s Jyoti Concast Ltd.
Shri Hukam Chand Bansal, Managing Director — Respondent

Appearance:
Shri S. Gautam, DR - For appellant
Shri Gagan Kohli, Advocate - For respondent

CORAM:
HON'BLE MR. S.S. KANG, VICE PRESIDENT

Date of Hearing: 5.5.2008

Final Order No. 763-764/08-SM(BR) dated 5.5.08

Per S.S. Kang:

Heard both sides.

2. The Revenue filed these appeals against the common order in appeal whereby the Commissioner (Appeals) confirmed the demand and set aside the penalty.

3. The contention of the Revenue is that the penalties were set aside on the ground that the duty has been paid prior to issuance of show-cause notice and the view has not been accepted by the Revenue and Hon'ble Punjab & Haryana High Court set aside the Larger Bench decision in the case of **CCE Vs. Machino Montell (I) Ltd.** reported in 2004 (62) RLT 709.

4. The contention of the respondent is that at the time of visit by the Revenue officers certain inputs were found short regarding which credit has been availed. The respondents are engaged in the manufacture of ingots and there are numerous inputs including scrap there was shortage of duty paid scrap. The contention is that it is only a mistake in accounting the raw material. There was no evidence on record to show that the duty paid inputs were used in the manufacture of final product and were cleared without payment of duty. The contention is also that the appellants were also receiving non-duty paid scrap as

well as duty paid scrap and both are stored at a common place, therefore, it cannot be said that there was a shortage of duty paid scrap.

5. I find that in this case, the Revenue's appeal is against setting aside of the penalties. There is no dispute at the time of visit by the Revenue officer, there was shortage of duty paid scrap the respondents are receiving duty paid scrap and non-duty paid scrap as evident from the Panchnama. In these circumstances, as there is no evidence that scrap was cleared as such or used the same in manufacturing goods which were cleared without payment of duty. As the appellant had not properly accounted for the stock of duty paid scrap, therefore, it is case of imposition of penalties. In these circumstances, I find no infirmity in the impugned order, the appeals are dismissed.

(Dictated & pronounced in open Court)

(S.S. KANG)
VICE PRESIDENT

RM