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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/3727/2006-3728/2006 – SM [BR] Date 09/01/2009

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

To :
C.C.E.JALANDHAR
HQ AT CHANDIGARH, PLOT NO 19, SECTOR 17-C,
CHANDIGARH.
C.C.E.JALANDHAR Appellant

Vs

M/S DCM ENGG PRODUCTS Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 21 – 22 / 2009 - SM[BR] dated 2.1.2009 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   M/S DCM ENGG PRODUCTS
   ASRON, DISTT- NAWANSHAHAR, PUNJAB.
   2. M/S GUWAHATI CARBON LIMITED
   VILLAGE- PUB-BORAGAON, N.H.37, P.O.GURCHUK,
   GUWAHATI.
2. Adv. / Consult
   MR.S.C. KAMRA & CO.
   B-2/210(BASEMENT), SAFDARJUNG ENCLAVE, NEW DELHI- 110029
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 - 3
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
13. Taxindiaonline.com Pvt.Ltd. B-XI/8183.Vasant Kunj. New Delhi - 110070
14. Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-1
15. Office Copy
16. Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K.PURAM, NEW DELHI.

EXCISE APPEAL NO.3727-3728/2006-SM

[Arising out of Order-in-Appeal No.257-258/CE/JAL/2006 dated 24.08.2006 of the Commissioner (Appeals), Central Excise, Jalandhar]

Date of hearing/decision:24.12.2008.

For Approval and Signature:

Hon'ble Mr.D.N.PANDA, JUDICIAL MEMBER

C.C.E. Jalandhar ......Appellant
[Represented by Shri S.K.Bhaskar, DR]

Vs.

M/s. DCM Engg. Products ....Respondent
[Represented by Shri S.C. Kamra, Advocate]

CORAM: Hon'ble Mr.D.N. PANDA, JUDICIAL MEMBER

Final ORDER NO 21-22/09-SM(BR)/Dated: 24.12.2008

PER: D.N.PANDA

Revenue proceeded against the respondent M/s. DCM Engineering Ltd.on the charge that the said concern had availed higher amount of Modvat Credit to the extent of Rs.93,693/- against the purchases made from M/s. Guwahati Carbon Limited. The excess Modvat Credit according to the Department is attributable to the addition by way of freight to the cost of goods cleared by Guwahati Carbon Ltd. With this charge the appellant M/s. DCM was directed by adjudicating authority to pay back the amount of Rs.93,693/- availed by them as Modvat Credit. Similarly, penalty of Rs.50,000/- was imposed on the Appellant. The appellant M/s. Guwahati Carbon Ltd., by the same order of adjudication was imposed penalty of Rs.50,000/-. Both these appellants came in appeal before the ld. Commissioner (Appeals). That authority allowed appeal of both the appellants and has given relief from charges as well as levies.

2. Revenue being aggrieved by the order in appeal came before this Forum against both the assessee, who are respondents here. The respondents M/s. Guwahati Carbon Ltd. has come in cross objection against Revenue's appeal Case No. 3727/06 whereas M/s. DCM Engineering has not come in cross objection.

3. The ld. DR appearing for Revenue has supported the orders of adjudication.

4. The ld. Counsel, Shri S.C. Kamra appearing for the assessee M/s. DCM Engineering Ltd. in appeal case No.3727/06 submits that whatever was the duty required to be paid as per invoice, was paid by the respondent M/s. Guwahati Carbon Ltd. The genuineness of payment of duty is doubted by the Department. He also submits that there is no malafide of the respondent M/s. DCM Engineering Ltd. He further submits that whatever duty has been paid by the respondent against the

purchases that was only claimed against Modvat Credit. Neither there was any unjust claim towards Modvat Credit nor any illegal claim by the assessee

5. There was no appearance by the respondent, M/s. Guwahati Carbon Ltd.

6. The record reveals that the only charges levelled by the Revenue was that the freight was added to the basic price at the time of clearance, which has boosted the excise liability. Other than this charge, there is no evidence brought to show that both parties are intentionally doing any act which has caused any evasion to the revenue. No intention of the parties has been proved to bring them to charge. Therefore, duty paid by M/s. D.C.M. Engineering Ltd. having gone into the treasury through M/s. Guwahati Carbon Ltd., the Respondent D.C.M. Engineering Ltd. should not be debarred to take credit of the same in the absence of any questionable conduct. Finding no material against both the respondents, Revenue fails in both these appeals. Accordingly, both the appeals of the Revenue are dismissed. In view of the above dismissal, Cross Objection in appeal No.3728 is also disposed.

[Dictated & Pronounced in the open court].

(D.N.PANDA)
JUDICIAL MEMBER

AJ