

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
Respondent

M/S DCM ENGG PRODUCTS

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

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 Publications (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), Thvagaraya Road, T. Nagar, Chennai

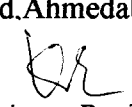
13 Taxindiaonline.com Pvt.Ltd, B-XI/8183, Vasant Kuni, New Delhi - 110070

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)


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.3727-3738/2006-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(CR) /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.93693/- 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 Id. 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 Id. DR appearing for Revenue has supported the orders of adjudication.

4. The Id. 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, ^{it} 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