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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

Date 02/02/2009

Appeal No. E/3973/2006 – SM [BR]

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

To :
C.C.E. CHANDIGARH

C.R. BUILDING,
SECTOR 17-C, CHANDIGARH
C.C.E. CHANDIGARH

Appellant
Vs
Respondent

M/S RAGHAV ALLOYS (P) LTD.

I am directed to transmit herewith a certified copy of **Final order No**. 92 /2009 –SM[BR] dated 23.1.2009 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 RAGHAV ALLOYS (P) LTD.
   G.T. ROAD, VILL. HARBANSPURA, SIRHIND, PUNJAB.
2. Adv. / Consult
   MR.K.K ANAND
   A-5,BASEMENT,LAJPAT NAGAR-III NEW DELHI-24

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). Thyagarava 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)

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

E/Appeal No.3973/2006 -SM(Br)

(Arising out of order in appeal No.971/CE/Chd/06 dated 17.10.06 passed by the Commissioner of Central Excise (Appeals), Chandigarh)

CCE, Chandigarh — Appellant

Vs

M/s Raghav Alloys (P) Ltd — Respondent

Appeared for Appellant: Shri R.K. Verma, DR
Appeared for Respondent: Shri Hemant Bajaj, Advocate

Date of Hearing:16.1.09

Coram: Hon'ble Mr.D.N. Panda, Judicial Member

Final Order No. 92 /2009-SM(BR)

Per D.N. Panda:

Revenue's grievance in this appeal is that when the goods have not been received by the respondents, they were not entitled to Cenvat credit and the relief otherwise granted by the first appellate order, should be reversed. The learned DR Shri R.K. Verma submits that the appellant used certain inputs for manufacture of ingots in its furnace but the very input has not gone into the manufacture, for non receipt of the same, the appellant is not entitled to get any credit in respect of duty liability.

The department made out its case that the materials were sent to certain re-rollers. Therefore, claims in respect of cenvat credit needs to be dealt with in accordance with law.

2. Shri Hemant Bajaj, learned Counsel appearing for the respondents submits that the lower appellate authority has passed a speaking and reasoned order and test all the aspects of the matter. Therefore, that order does not require any interference.

3. Heard both the sides and perused the record. The impugned order fails to show that the learned Commissioner has decided the matter without examining evidence. When the receipt of the raw material is questionable, all benefits that is claimed by the respondent is certainly deniable. Therefore, the matter is required to be sent back to the adjudicating authority to scrutinize the charge as to whether there was any tangible sale, transfer of property over goods occurred, whether there was any evidence to show that the goods have moved from origin to destination and there was any receipt of the goods as well as use thereof in manufacture. If this entire chain is established, the next step that is to be taken is to see whether the goods have really produced finished product. If any of the link is delinked, the appellant is certainly deniable to Cenvat credit.

4. In some of the appeals, similar such nature of cases have been sent back for scrutiny to the authorities below. That authority is expected to go through the order to this effect and

pass speaking and reasoned order. In the result, the appeal is remanded.

(Order dictated and pronounced in the open Court).

(D.N. Panda)
Judicial Member

MPS*