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CUSTOMS. EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Appeal No. E/5465/2004 - EX[DB]   Date 09/02/2009

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

To :
M/S INDIAN SOLDERS & BRAZE ALLOYS
OPP. RAMLILA GROUNDS, DELHI ROAD, MEERUT
M/S INDIAN SOLDERS & BRAZE ALLOYS   Appellant
Vs
C.C.E. MEERUT-I   Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 109/2009- **EX[DB]** dated 4-2-09 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
   C.C.E. MEERUT-I
   UNIVERSITY ROAD, MANGAL PANDEY NAGAR, MEERUT-I
2. Adv. / Consult SH. RAVI RAGHVAN, ADV., B-6/10, S.J. ENC., N.DELHI-29

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-15
15 Office Copy
16 Guard file

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-III

Date of hearing/decision: 4.2.2009

Central Excise Appeal No.5465 of 2004

Arising out of the order in appeal No.310/CE/MRT-I/2004 dated 30.4.04 passed by the Commissioner (Appeals , Central Excise, Meerut – I.

For Approval and Signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)
Hon'ble Mr. P.K. Das, Member (judicial)

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2	Whether it should be released under Rule 27 of 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?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

Appellants | Respondent
M/s Indian Solders & Braze Alloys vs. C.C.E. Meerut I

Appearance:

Shri Ravi Raghvan, Advocate for the appellant
Shri B.S. Suhag, Authorized Departmental Representative (DR) for the Revenue

CORAM: Hon'ble Mr. M. Veeraiyan, Member (Technical)
Hon'ble Mr. P.K. Das, Member (Judicial)

Final Order No. 109 / 09 – Ex

Per M. Veeraiyan:

This is an appeal against the order of the Commissioner (Appeals) No. 310/CE/MRT-I/2004 dated 30.4.04.

2. Heard both sides.

3. The appellant manufactures from copper scrap items like copper rods, copper phos rods, copper phos. Strips & brass rods and wires. When the officers

visited the unit on 13.2.98 totally 1255.2 kgs. of copper phos rods, copper phos strips & brass rods valued Rs.1,77,554/- was found not entered in the accounts and was seized. In the proceeding based on the investigation, the original authority ordered confiscation of the said goods and allowed the same on payment of redemption fine of Rs.45,000/- and also imposed penalty of Rs.15,000/-. On appeal, Commissioner (Appeals) has upheld the order.

4. Learned Advocate submits that what was seized on the date of visit included under 1030 kgs of wires which are finished goods and 225 kgs. of copper rods which are intermediate goods. According to him, the wires are liable to classification under Chapter 7408.29 and that they are eligible for exemption based on value of clearance under Notification No.1/93 , dated 28.2.93 as amended. However, the Department has held them as liable for confiscation under 740712 and that they were not eligible for small scale exemption. The learned Advocate also submits that rods being sem-finished and irregular in shape are not marketable and the same cannot be held as excisable. He also submits that wires are excisable but exempted as claimed earlier. Since the rods are intermediate products and in semi-finished condition, the value of the same should not be counted towards value of clearance under Notification No.1/93 as amended.

5. Learned DR reiterates the findings of the Commissioner (Appeals).

6. We have carefully considered the submissions. There is factually inaccuracy in the order of the Commissioner (Appeals). Copy of panchnama produced before us indicates 1030 kgs. of goods seized as finished goods whereas Commissioner (Appeals) has noted that according to the claim by the appellant, the entire quantity of confiscated goods were in sem-finished condition. This appears to be factually incorrect. The submission by the learned Advocate that rods are semi-finished and hence not excisable has not been considered by the authorities below. If the appellant's claim that the rods are not excisable is upheld it would have a bearing on the value of clearances for the purpose of Notification 1/93. Therefore, we set aside the orders of the authorities below and remand the matter to the original authority to determine

all the issues afresh after giving reasonable opportunity of hearing to the appellant.

7. The appeal is allowed by way of remand.

(Dictated and pronounced in open Court)

(M. Veeraiyan)
Member (Technical)

(P.K. Das)
Member (Judicial)

scd/