

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/2074/2007 – SM [BR]

Date 20/03/2009

Assistant Registrar
C.E.S.T.A.T, New DelhiTo :
M/S MOONLIGHT ALLOYS PVT. LTD.BEHIND MAHAMAYA DHARAM KANTA VIDHAN
SABHA ROAD VILLAGE KACHANA RAIPUR-
CHHATTISGARH

M/S MOONLIGHT ALLOYS PVT. LTD.

Appellant

Vs

C.C.E. RAIPUR

Respondent

I am directed to transmit herewith a certified copy of **Final order No. 230 / 2009 –SM[BR]** dated 17.3.2009
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944


Assistant Registrar
(SM Appeal Branch)**Copy to :**

1. Respondent

C.C.E. RAIPUR

CENTRAL EXCISE BUILDING, DHAMTARI ROAD, TIKRAPARA, RAIPUR 492001.

2. Adv. / Consult

NONE;-----

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

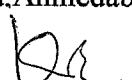
12 Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar, Chennai

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)

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

E/Appeal No.2074 /2007-SM(Br)

(Arising out of order in appeal No.31/ST/RPR.I/07 dated 30.3.2007
passed by the Commissioner of Central Excise (Appeals), Raipur)

M/s Moonlight Alloys Pvt Ltd

Appellant

Vs

CCE, Raipur

Respondent

Appeared for Appellant : None

Appeared for Respondent : Shri R.K. Verma, DR

Date of Hearing: 13.3.09

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

Final Order No. 230 /2009 - SM (BR)

Per D.N. Panda:

None is present for the appellant. Record revealed that there was stay of realization of demand in terms of order dated 23.8.2007 passed by the Tribunal relying on the decision in the case of Birla Corporation Ltd - 2007 (6) STR 247 vide Stay Order No.683/2007-SM(BR). Record revealed that for the period January 2005 to February, 2005, the appellant had availed Cenvat credit of an amount of Rs.32,902/- on the strength of photocopy of challan. The Adjudicating Authority observed that Rule 9 of Cenvat Credit Rules, 2004 does not grant relief to the appellant since that rule came into force from 16.6.2005.

2. Learned DR submits that Rule is not retrospectively applicable for which the authorities have rightly denied relief to the appellants.

3. Heard the Revenue. It would be just and proper to send the matter back to the learned Adjudicating Authority who shall examine the challan and ascertain appellant's claim whether it is based on the deposit of tax to the treasury. While deciding the matter, learned adjudicating authority shall have advantage of going through the decision of the Tribunal and dispose of the matter in accordance with law, granting fair opportunity of hearing to the appellant.

4. In the result, the appeal is remanded to the learned Adjudicating Authority.

(Order dictated and pronounced in the open Court).

(D.N. Panda)
Judicial Member

MPS*