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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

Date 06/04/2009

Appeal No. E/4219/2004 - EX[DB]

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

To :
M/S L.P. METAL INDS.
COURT ROAD, JAGADHRI, HARYANA

M/S L.P. METAL INDS. — Appellant
Vs
C.C.E. PANCHKULA (HARYANA) — Respondent

I am directed to transmit herewith a certified copy of **Final order No254 EX[DB]** dated 27.3.2009 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. PANCHKULA (HARYANA)
   NEW CGO COMPLEX, NH-IV, FARIDABAD
2. Adv. / Consult
   MR.PIYUSH KUMAR,ADV
   B-25,LAJPAT NAGAR-III,N.DELHI
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. LAWCRUX Advisors (P) Ltd, Law House,1-8,Sector - 10, Faridabad 121003 (Haryana)
16. Office Copy
17. Guard file

Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R.K.Puram, New Delhi-110066.
Principal Bench, New Delhi.

E/4219/04

(Arising out of order-in-Appeal No.12/CE/Appl/Div.Y.Ngr/PCK/2004 dt.27.5.04 passed by Commissioner(Appeals), Faridabad)

M/s. L.P.Metal Industries — Appellant

Versus

CCE, Panchkula — Respondent

Appearance
Shri A.K.Mishra, Consultant for Appellant

Shri S.N.Srivastava, Authorised Departmental Representative(DR) For Respondent

Coram: Hon'ble Mr. D.N.PANDA, JUDICIAL MEMBER
Hon'ble Mr. RAKESH KUMAR, MEMBER (TECHNICAL)

Date of decision: 23.3.09
FINAL Order No. 254/09-EX.

Per D.N.Panda:

Ld. Counsel Shri A.K.Mishra argues that the intermediate goods manufactured by the appellant from the brass scrap purchased have undergone ultimate manufacture of the respective goods which have suffered duty. He submits that the intermediate goods were entitled to get concession under Notification No.67/95-CE for the captive consumption. The appellant has no hesitation to pay the duty on the final product at the concessional rate of duty. That has already been paid and verifiable from the record. He further submits that proceedings has been made under surmise while the appellant has co-operated revenue for appropriate determination of duty without resorting to coercive measure of law.

2. Ld. DR submits that the appellant having been granted concession, they have not discharged appropriate duty leviable for which the proceedings has been rightly initiated. He submits that when the appellant came forward to make deposit of appropriate duty on the finished goods, those were cleared during the material period. Revenue shall charge appropriate duty giving concession to the duty already paid if such set off is permissible under law. However, department shall charge interest for the duty remaining unpaid during the material period.

3. Heard both sides and perused the record. We have appreciated that the appellant have a pleading that they were governed by the Notification granting them appropriate relief for captive consumption i.e. Notification No.67/95-CE. When such a pleading was available, Ld. Commissioner should have taken care to dispose the matter on merit. We find that the matter not being dealt by the Ld. Commissioner(Appeals), we direct the Ld. adjudicating authority to recompute the duty liability taking

assistance of above notification in respect of finished goods that has come out from the entire process and grant adjustment of the duty already paid so as to determine the final liability. If he finds that there is a default in payment, that should meet the interest charge. Considering that whole proceeding is misconceived, there should be no penal consequances. If redemption fine was imposed that shall not sustain for our view aforesaid.

4. In the result, the appeal is allowed in the aforesaid terms and remand the matter to the adjudicating authority to make computation of final duty liability in accordance with law.

Order dictated in the open Court.

(D.N.Panda)
Judicial Member

(Rakesh Kumar)
Member Technical

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