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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

Appeal No. E/1506/2007 – SM[BR]   Date 08/05/2009

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

To :
C.C.E. KANPUR
117/7, SARVODAYA NAGAR, KANPUR 208005.

C.C.E. KANPUR   Appellant
Vs
M/S V.S. TUBE TECH (P) LTD,   Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 363 / 2009 –SM[BR] dated 28.4.2009 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 V.S. TUBE TECH (P) LTD,
   C-46 & 47, UPSIDC INDUSTRIAL AREA, SITE-II, ORAI
2. Adv. / Consult
   NONE;---------------

3 S.D.R
~~4 J.C.D.R~~.
5 Bar association. CESTAT. New Delhi
6 Director Publications. Customs. Excise. I.P. Estate. New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 Raghuraman's 44-B. Regal Flat.Shipra Suncity. Indirapuram - 201010.Ghaziabad. DT. U.P.
10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11 M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
12 Taxindiaonline.com Pvt.Ltd. B-XI/8183.Vasant Kunj. New Delhi - 110070
13 Taxmann Allied Service Pvt Ltd.. 21/35. West Punjabi Bagh. New Delhi - 110026
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15
15 LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
16 Office Copy
17 Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. III

Excise Appeal No. 1506 /2007- SM(BR)

[Arising out of Order-in-Appeal No. 98/CE/APPL/KNP/2007 dated 21.3.2007 passed by Commissioner of Customs & Central Excise (Appeals), Kanpur]

For approval and signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)

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1. Whether Press Reporters 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 the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : Yes
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

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Commissioner of Central Excise
Kanpur — Appellant

Vs.

M/s. V.S.Tube Tech.(P) Ltd. — Respondent

Appearance:

Mr. R.K. Verma, DR for the Appellant
None for the Respondent

CORAM:

Hon'ble Mr. M. Veeraiyan, Member (Technical)

Date of Hearing/decision : 27.4.2009

Final ~~ORAL~~ **ORDER NO. 363/09-SM(BR)**

Per M. Veeraiyan:

Heard the learned DR for the appellant-department. None is present for the respondent inspite of notice.

2. On the date of visit by the officers, raw-material on which Cenvat credit was taken was found short and the credit involved was Rs.54,835/- and the said amount has been paid by the respondents and there is no dispute about the same. The original authority imposed a penalty of Rs.10,000/- and the Department filed appeal before the Commissioner (Appeals) seeking enhancement of penalty of Rs. 54,835/- without success and they are trying their luck before the Tribunal. The Commissioner (Appeals) has in fact held that there was no justification even for imposition of Rs. 10,000/- as penalty and since the respondents had not come in appeal before him, he refrained from giving relief.

3. The present case is a case of admitted shortage of raw material on which credit has been taken. The party without explaining the reason for shortage, had reversed the credit involved. However, if an allegation made that some goods had been clandestine removed, the burden to prove the same is on the department. No evidence of clandestine removal of goods found short has been adduced. Under these circumstances, there is no reason, whatsoever, to interfere with the order of Commissioner (Appeals).

4. The appeal by the Department is rejected.

(M. Veeraiyan)
Member(Technical)

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