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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 20/05/2009

Appeal No. E/941 /2007 – SM[BR]

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

To :
C.C.E. RAIPUR
CENTRAL EXCISE BUILDING, DHAMTARI ROAD,
TIKRAPARA, RAIPUR 492001. Appellant
C.C.E. RAIPUR
Vs
Respondent
M/S BHILAI WIRES LTD.

I am directed to transmit herewith a certified copy of **Final order No**. 414 / 2009 –SM[BR] dated 12.3.2009

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
M/S BHILAI WIRES LTD.
(STEEL WIRES DIVISION), INDUSTRIAL AREA, POST BOX NO.14, BHILAI (C.G.)-490026

2. Adv. / Consult SHRI. L.P. ASTHANA ADV.
R-163, SECOND FLOOR G.K. PART-I,
NEW DELHI-48.

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 & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI

COURT – III

EXCISE APPEAL NO. 941 OF 2007-SM

[Arising out of Order-in-Appeal No. 07/RPR-II/2007 passed by the Commissioner (Appeals-II), Customs & Central Excise, Raipur]

For approval and signature:

Hon'ble Mr. P.K. Das, Member (Judicial)

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 would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3.	Whether their Lordships wish to see the fair copy of the order?	
4.	Whether order is to be circulated to the Departmental authorities?	yes

CCE, Jaipur Appellant

Vs.

M/s. Bhilai Wires Ltd., Respondent

Appearance:

Shri S. Gautam, D.R. for the Revenue/appellant;
Smt Reena Kher, Advocate, for the appellant;

Coram:

Hon'ble Mr. P.K. Das, Member (Judicial),

Date of hearing/decision: 12th March, 2009

FINAL ORDER NO. 414/09-SM(BR) **dated** 12.3.09

Per P.K. Das:

Revenue filed this appeal against order-in-appeal No. 07/RPR-II/2007 dated 24.1.2007 whereby adjudication order was set aside.

2. Learned D.R. submits that in this case SAIL, BSP, Bhilai paid the duty @ 8% adv. Subsequently, another manufacturer ABS Steel Limited, Bhilai credited the said amount and cleared the same goods to D.M. Engineering Limited who are trader, on payment of duty @ 12% adv. The respondents received the goods from D.M. Engineering Ltd. on the basis of duty paying documents. He submits that the respondents availed credit of duty @ 12% advalorem instead of 8% which was paid by SAIL. So, the original authority rightly denied the credit of the differential amount.

3. Learned advocate on behalf of the respondents submits that on the identical issue this Tribunal in the case of Raj Kesari Electrodes Pvt. Ltd. vs. CCE, Jaipur, reported in 2008 (228) ELT 466 (Tri.-Del.) held that assessment by jurisdictional officer of input supplier not challengeable by jurisdictional authorities of final product manufacturer. She submits that in identical situation in the case of Raj Kesari Electrodes (supra) allowed the credit of 12% advalorem. She also relied upon the decision of the

Tribunal in the case of Indian Oil Corporation Ltd. vs. CCE, Guntur, reported in 2006 (206) ELT 533 (Tri.-Bang.).

4. After hearing both sides and on perusal of the records, I find that the Tribunal in the case of Indian Oil Corporation Ltd. (supra) held that credit can be taken on the basis of duty paying documents. In the present case the respondents availed credit on the duty paid by the input supplier. Therefore, the present case is fully covered by the decision in the case of Raj Kesari Electrodes Pvt. Ltd. (supra). In view of that, I do not find any reason to interfere with the order of the Commissioner (Appeals). Accordingly, appeal filed by the Revenue is rejected.

(Dictated & pronounced in the Open Court.)

(P.K. DAS)
MEMBER (JUDICIAL)

RK