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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/2060 – 2061 / 2007-SM[BR] Date 20/05/2009

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

To :
(1-2) M/S KWALITY FOUNDRY INDS. LTD.
AMASEONI INDL. AREA, RAIPUR, C.G.

M/S KWALITY FOUNDRY INDS. LTD. Appellant

Vs

C.C.E. RAIPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No**.421 – 422 / 2009 –SM[BR] dated 13.3.2009

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 SHRI H.V. GHIRIKAR

   M/S APPELLANT;------------------

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)
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Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Excise Appeals Nos.2060 & 2061 of 2007-SM

[Arising out of Order-in-Appeal No.61/RPR-I/2007 dated 12.03.2007 passed by the Commissioner of Central Excise (Appeals-I), Raipur]

Date of Hearing/ Decision:13.03.09

For approval and signature:

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

1. Whether Press Reporters may be allowed to see 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?	:	
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

M/s. Kwality Foundry Industries Ltd. ...Appellants
[Rep. by Shri H.V. Ghirnikar,Consultant]

Vs.

CCE, Raipur ...Respondent
[Rep. by Shri S. Gautam, DR]

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

Final Order No. 421 - 422/09-SM (BR) /Dated:13.3.2009

Per P.K. Das:

These appeals are arising out of common order and, therefore, both are being taken up together for disposal.

2. The relevant facts of the case, in brief, are that the appellants are engaged in the manufacture of pipes and pipe fittings, ingots, moulds, etc.

classifiable under Chapter Heading No.73 and 84 of the Schedule to the Central Excise Tariff Act, 1985. The appellants availed credit of Rs.99,560/- and Rs.94,441/- on the inputs against the invoices issued by the registered dealers viz. M/s. Maheshwari Udyog, Visakhapatnam and Shri Balaji Iron & Steel Traders, Visakhapattnam respectively. It has been alleged that the registered dealers did not purchase the goods from the manufacturer M/s. Rashtriya Ispat Nigam Ltd. directly and, therefore, the appellants are not eligible to take credit on the basis of documents issued by the registered dealers. The Original Authority disallowed the Modvat credit and imposed penalty. The Commissioner (Appeals) upheld the Adjudication Order.

3. Ld. Consultant on behalf of the appellants submits that the manufacturer of the inputs viz. M/s. Rashtriya Ispat Nigam Ltd. issued the invoices in the name of customer, M/s. A.S. Steel Traders and consigned to the above registered dealers. He further submits that the registered dealers received the goods and issued the invoices on the basis of the manufacturer's invoice. The appellant availed the credit on the basis of the invoices issued by the registered dealer. He further submits that there is no dispute that the appellant received the goods accompanied with invoices and recorded in statutory records and utilised in the manufacture of final products and, therefore, there is no reason to deny the credit. He relied upon the decision of the Tribunal in the case of CCE Vs. S.S.P.E. Cotton Mills (P) Ltd. reported in 1999 (106) ELT 102 (T).

4. Ld. DR on behalf of the Revenue reiterates the findings of the Commissioner (Appeals). He submits that Rule 2 (f) of Cenvat Credit Rules 2002 defined "first stage dealers" means a dealer who purchases the goods directly from the manufacturer. He further submits that in the present case, the registered dealer did not purchase the goods directly. He also submits that in this case M/s. A.S. Steel Products purchased the goods and they were not registered with the Central Excise Authorities. So, the invoices issued by the registered dealers are not a valid duty paying documents.

5. After hearing both the sides and on perusal of the records, I find that there is no dispute that M/s. Rashtriya Ispat Nigam Ltd. issued invoices mentioning therein the name of the customers as M/s. A.S. Steel Traders and consignees as M/s. Maheshwari Udyog and M/s. Shri Balaji Iron & Steel Traders. It appears that the registered dealers received the goods directly from the premises of Rashtriya Isapt Nigam Ltd. Further, the registered dealers issued the invoices on the basis of the manufacturer's invoices to the appellants. The main contention of the ld. DR is that the registered dealers did not purchase the goods. Therefore, they are not able to issue the invoices. I am unable to accept the contention of the ld. DR. It is seen that the invoices indicate both the registered dealers' name as well as the customer's name. It is not in the dispute that the goods were received by the registered dealers directly and supplied to the appellant's factory for use therein. The manufacturer of

input delivered the goods to the registered dealers through the purchaser, M/s. A.S. Steel Traders. Therefore, the invoices issued by the registered dealers are a valid duty paying document. In my view, as the registered dealers names were mentioned in the invoices issued the manufacturer of input, they will be treated at par with the purchasers. In addition to that, on perusal of invoices of M/s. Rashtriya Ispat Nigam Ltd., it has established link between the manufacturer of input and registered dealers. So, there is no reason to deny the credit to the appellants on the basis of the said documents. Accordingly, the impugned orders are set aside. Both the appeals are allowed with consequential relief.

Order dictated & pronounced in the open court on 13.03.2009.

(P.K. Das)
Member (Judicial)

Ckp.