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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/3275/2006 – SM[BR] Date 05/06/2009

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

To :
M/S AMKO EXPORTS
A-I, INDL AREA, B.S.ROAD, GHAZIABAD.

M/S AMKO EXPORTS Appellant
Vs
C.C.E.GHAZIABAD Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 541 / 2009 –SM[BR] Dated 26.5.2009 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.GHAZIABAD
   CGO COMPLEX,KAMLA NEHRA NAGAR,GHAZIABAD.
2. Adv. / Consult
   MR.RAJESH CHHIBBER
   FA/9, NEW KAVI NAGAR, GHAZIABAD
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 (Harvana)
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

CENTRAL EXCISE APPEAL NO. 3275 OF 2006-SM

[Arising out of Order-in-Appeal No. 112-CE/GZB/2006 dated 4.8.2006 passed by the Commissioner (Appeals), Central Excise, Ghaziabad]

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?	
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
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. Amco Exports — Appellants

Vs.

CCE, Ghaziabad — Respondent

Appearance:

Shri Rajesh Chhibber, Advocate for the Appellants;
Shri S. Gautam, D.R. for the Revenue

Coram:

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

Date of hearing/decision: 26th May, 2009

FINAL ORDER NO. 541/09-SM(BR) dated _________

<u>Per P.K. Das:</u>

The appellants filed this appeal against denial of credit on Furnace Oil.

2. Learned Advocate submits that they are engaged in the manufacture of fabrics. Furnace Oil is used in boiler. He submits that during the period April, 2003 to July, 2004 they received Furnace Oil with duty paying documents from Bharat Petroleum. However, the appellants were under the impression that credit was not available on Furnace Oil. Therefore, they availed credit of Rs. 7,08,249/- vide RG-23-A, Pt-I vide entry No. 123 dated 5.8.2004. He submits that they have also submitted all the documents in support of their contention that inputs were received during the material period.

3. Learned D.R. reiterates the findings of the Commissioner (Appeals). He submits that law provides that the assessee is liable to take credit immediately upon receipt of inputs. Therefore, they are not eligible to avail credit after a long period. He further submits that the appellants failed to submit documents to show receipt of Furnace Oil in their factory.

4. After hearing both sides and on perusal of the impugned order, I find that the Commissioner (Appeals) observed that the appellants could not submit documents to show receipt of Furnace Oil in their factory. In

my view, the appellants would liable to substantiate the evidence to show that they have received Furnace Oil in their factory and, thereafter, it will be considered, whether the appellants are eligible to avail credit. The main contention of the learned Advocate is that they placed evidences before the lower authorities but the same were not considered by them. As such, to meet end of justice, in my view, the matter requires to be remanded back to the original authority to examine the evidences placed by the appellants. Hence, impugned order is set aside and the matter is remanded back to the original authority to examine the evidence to show the receipt of Furnace Oil in the factory of the appellants and decide the matter in accordance with law. Accordingly, appeal is allowed by way of remand.

(Dictated & pronounced in the Open Court.)

(P.K. DAS)
MEMBER (JUDICIAL)

RK