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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/ 123 & 161 / 2007 -SM[BR] Date 17/06/2009

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

To :
C.C.E. CHANDIGARH
C.R.BUILDING PLOT NO. 19, SECTOR 17-C,
CHANDIGARH.

C.C.E. CHANDIGARH Appellant

Vs

M/S EMMBROS FORGINGS PVT. LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 575 – 576 / 2009 -SM[BR] dated 2.6.2009 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 EMMBROS FORGINGS PVT. LTD.
   VILL. RAMPUR SAINIAN, BARWALA ROAD, DERABASSI, DISTT. MOHALI.
2. Adv. / Consult SHRI JOY KUMAR ADV.
   FLAT NO.261/1, SEC.45-A, CHANDIGARH

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
3. M/S EMMBROS FORGINGS PVT.LTD.
   VILL. RAMPUR SAINIAN, BARWALA ROAD
   DERABASSI. DISTT;PATIALA

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. 123 & 161 OF 2007-SM

[Arising out of Order-in-Appeal No. 1006-1007/CE/CHD/06 dated 24.10.2006 passed by the Commissioner (Appeals), Central Excise, Chandigarh]

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

CCE, Chandigarh — Appellant

Vs.

M/s. Emmbros Forgings Pvt. Ltd., & vice versa — Respondents

Appearance:

Shri S.N. Srivastava & Shri S.K. Bhaskar, D.R. for the Revenue;
Shri Joy Kumar, Advocate for the respondents

Coram:

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

Date of hearing/decision: 2nd June, 2009

FINAL ORDER NO. 575-576/09-SM (BR) **dated** 2.6.09

Per P.K. Das:

Relevant facts of this case as per records, in brief, are that the assessees are engaged in the manufacture of Forgings of iron & steel falling under heading 73261990 of the Schedule to the central Excise Tariff Act, 1985. On 13.12.2005 Central Excise officers visited the assessee's factory. During verification of records, it was found that the assessees were undertaking job work and cleared the forged goods manufactured on job work basis without payment of duty in terms of notification No. 214/86-CE dated 25.3.86. The assessees voluntarily reversed the credit of Rs. 36,325/- and Rs. 727/- on their Cenvat account on 19.12.2005 and also deposited 25% of duty (i.e. Rs. 9,082/-) as penalty along with interest vide TR-6 challan dated 20.12.2005. Show cause notice dated 8.2.2006 was issued proposing to appropriate the amount deposited by the assessees and to impose penalty. Original authority confirmed the demand of duty and appropriated the amount of duty and penalty as deposited by the assessees. Commissioner (Appeals) dropped the penalty and interest as the assessees deposited the duty before issue of show cause notice. Hence, Revenue filed the appeal against order of the Commissioner (Appeals) whereby penalty was set aside. The assessees filed the appeal against demand of duty.

2. After hearing both sides and on perusal of the records, I find that the issue in this case is in narrow compass. It is seen that the Central Excise officers during visit detected certain irregularities. The assessees deposited the duty voluntarily along with interest and 25% of duty amount as penalty without any protest. Show cause notice was issued to appropriate the amount as deposited by them. In this context, the learned Advocate submits that the payment of duty was wrongly made by the assessee. I find that the assessees have deposited the duty before issuance of show cause notice. Further, payment was made by the assessee without any protest, which was appropriated by the original authority. Hence, the order of the Commissioner (Appeals) is modified and order of original authority is restored insofar as imposition of penalty and payment of interest are upheld. Appeal filed by the assessees is rejected. Appeal filed by the Revenue is allowed.

(Dictated & pronounced in the Open Court.)

(P.K. DAS)
MEMBER (JUDICIAL)

RK