TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

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/414 /2007 – SM[BR] E/CO/ 65 / 2007-SM[BR] Date 18/06/2009

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

To :
C.C.E. JALANDHAR
(HQ AT CHANDIGARH) PLOT NO 19, SECTOR 17-C,
CHANDIGARH

C.C.E. JALANDHAR Appellant
Vs
M/S B.D. GUPTA & SONS Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 586 / 2009 –SM[BR] dated 5.6.2009 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 B.D. GUPTA & SONS
MOTIA KHAN, MANDIGOBINDGARH
2. Adv. / Consult
MR.G.S SANDHE
163/D, MODEL TOWN, PATIYALA
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 NEW DELHI

Excise Appeal No.414 of 2007 with
E/CO/65 of 2007-SM (BR)

[Arising out of Order-in-Appeal No.299/CE/JAL/2006 dated 29.09.2006 passed by the Commissioner of Central Excise (Appeals), Customs & Central Excise, Jalandhar]

Date of Hearing/ Decision:5.6.2009

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.
2. Whether it should 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, Jalandhar ...Appellants
[Rep. by Shri Sansar Chand, DR]

Vs.

Shri B.D.Gupta & Sons ...Respondent
[Rep. by Shri G.S. Sindhe, Advocate]

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

Final Order No. 586/09-SM(BR)/Dated:05.06.2009

Per P.K. Das:

After hearing both the sides and on perusal of the records, I find that the respondent is a registered dealer issued invoices to the manufacturer for availing Modvat credit. The Central Excise Officers during investigation found that several registered dealers issued invoices without supplying the materials extended the benefit of Modvat to the manufacturer. A show cause notice dated 3.6.2002 was issued to the various dealers and manufacturers. The Original Authority confirmed the demand of duty and imposed penalties on the various dealers and manufacturers except the present respondent. Revenue filed appeal before the Commissioner (Appeals) against the Adjudication Order for imposition of penalty on the respondent. Similarly, other noticees also filed appeal before the Commissioner (Appeals) for setting aside the Adjudication Order. The Commissioner (Appeals) vide Order-in-Appeal dated 29.09.06 set aside the Adjudication Order against the other noticees. In the present case, the Commissioner (Appeals) following his earlier Order-in-Original dated 30.11.2005 rejected the Revenue's appeal. Hence, the Revenue filed this appeal before this Tribunal.

2. Ld. Advocate placed the decision of the Tribunal in the case of CCE, Jalandhar Vs. M/s. Bhawani Shanker Castings Ltd. & Ors. vide Final Order No.1787-1792 of 2007-SM (BR) dated 11.12.2007 whereby the appeals filed by the Revenue in the present adjudication order against the other noticees were rejected. For the proper appreciation, the relevant portion of the Ground of Appeal of the Revenue, in the present case, is reproduced below:-

> "Commissioner Appeal has observed that other parties involved in the case i.e. party No.1 Tisco Mandigobindgarh ASPL Party No.2, Party No.3 & Party No.4 also filed appeals against order-in-original and the appeals were allowed by the Commissioner Appeal vide Order-in-Original No.300-305/CE/JAL/2005 dated 30.11.2005. The said order of Commissioner Appeal has

not been accepted by the department and appeal has been preferred against the said order-in-appeal which is pending decision before CESTAT."

3. I find that the Tribunal already decided the above matter vide Final Order dated 11.12.2007 and dismissed the appeal filed by the Revenue. The relevant portion of the order of the Tribunal is reproduced below:-

> "5. I find that M/s. Bhawani Shankar Casting Ltd. received the inputs under the cover of invoices issued by the registered dealers and there is no allegation in the present proceedings that vehicle number mentioned in the invoices under which M/s. Bhawani Shankar Casting Ltd. received the raw material are not of trucks etc. The allegation is that vehicle number mentioned in the invoices under which dealers received the raw materials were not of trucks. The adjudicating authority while confirming the demand on M/s. Bhawani Shankar Casting Ltd. has not imposed penalty on M/s. B.D. Gupta & Sons who also received the goods under the invoices where the vehicle are of scooters and motor cycles, etc. Further, I find that respondent produced evidence that the payments were made through banking channel and as per the weighment slips the raw material was weighed before received by M/s. Bhawani Shankar Casting Ltd. In these circumstances, I find no infirmity in the impugned order, the appeals are dismissed."

4. In view of the above discussions, I find that the Tribunal already rejected the appeal filed by the Revenue against other noticees in the same show cause notice and, therefore, I do not find any reason to interfere the order of the Commissioner (Appeals). Accordingly, the appeal filed by the Revenue is rejected. Cross objection is disposed of.

Order dictated & pronounced in open court on 5.6.2009.

(P.K. Das)
Member (Judicial)

Ckp.