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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/1421/2007 – SM[BR] Date 19/06/2009

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

To :
M/S METALLIZING EQUIPMENT CO. PVT. LTD.
E-101/101A. MIA, BASNI PHASE-II JODHPUR(RAJ.)

M/S METALLIZING EQUIPMENT CO. PVT. LTD. Appellant
Vs
C.C.E. JAIPUR II Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 594 / 2009 –SM[BR] dated 8.6.2009 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
   C.C.E. JAIPUR II
   N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.
2. Adv. / Consult
   MR.OM P.AGARWAL & CO.
   56, SECTION 7, N.P.H ROAD, JODHPUR(RAJ)
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. 1421 OF 2007-SM

[Arising out of Order-in-Appeal No. 122/HKS/CE/JPR-II/07 dated 21.02.2007 passed by the Commissioner (Appeals-II), Customs & Central Excise, Jaipur]

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?	N
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. Metallizing Equipment Co. (P) Ltd., Appellant

Vs.

CCE, Jaipur Respondent

Appearance:

Shri O.P. Agarwal, C.A. for the appellant;
Shri S.K. Bhaskar, D.R. for the Revenue

Coram:

Hon'ble Mr. P.K. Das, Member (Judicial), Date of hearing/decision: 8th June, 2009

FINAL ORDER NO. 594/09-SM(BR) **dated** 8.6.09

Per P.K. Das:

The appellants filed this appeal against rejection of refund claim of Rs. 42,864/-. The relevant facts of the case, in brief, are that the appellants are engaged in the manufacture of machines & metal spray powder. They obtained purchase order No. 5H1-1596-70 dated 4.10.2005 from Hindustan Aeronautics Ltd. for supply of 250 kgs. of Metal Spray Powder @ Rs. 15,600/- per kg. The appellants were availing SSI Exemption benefit. On 12.12.2005 they crossed the exemption limit and started paying full duty. Therefore, they cleared the goods to Hindustan Aeronautics Ltd. on assessable value of Rs. 15,600/- and paid duty @ 16% advalorem. The appellants filed refund claim on the ground that they paid excess amount of duty beyond contract rate. The original authority rejected the refund claim which was upheld by the Commissioner (Appeals).

2. Learned Counsel on behalf of the appellants submits that the appellants supplied the goods on the basis of purchase order at contract price which is inclusive of excise duty and, therefore, the amount paid by them beyond the contracted price is refundable. He submits that it is revealed from the payment advice, purchase order & credit notes that the buyer had given contract price @ Rs. 15,600/- and they have not paid the excess amount of duty. He also submits that the Commissioner

(Appeals) passed the order beyond the show cause notice. He relied upon the following decisions of the Tribunal:-

(1) CCE, Calcutta vs. Panihati Rubber Ltd.

– 2006 (202) ELT 41 (SC);

(2) Industrial Cables (India) Ltd. vs. CCE, Chandigarh

- 2005 (185) ELT 70 (Tri.-Del.)

Regarding order of the Commissioner (Appeals) is beyond the show cause notice, he relied upon the decision of the Tribunal in the case of CCE, Bombay vs. Gupta Soaps, reported in 1999 (111) ELT 720 (Tribunal).

3. Learned D.R. reiterates the findings of the Commissioner (Appeals). He submits that the appellants produced letter dated 12.1.2006 in respect of purchase order dated 24.12.2005 wherein the buyers stated that they are not ready to amend the purchase order. He submits that the appellants failed to produce any evidence in respect of purchase order dated 4.10.2005, which is the subject matter of the present appeal. He also submits that the appellants paid the duty on the basic price of Rs. 15,600/- as is evident from central excise invoice and the contention of the appellants that the buyers are not paying the excess duty, cannot be accepted. It is his contention that the assessment of duty is not linked with the collection of duty from the buyer. He also submits that the case laws relied upon by the Counsel are in respect of unjust enrichment whereas in the present case the refund was rejected on merit.

4. After hearing both sides and on perusal of the records, I find force in the submissions of the learned D.R. Refund was rejected on merit. The appellants cleared the goods on the basis of purchase order. It is stated that after crossing the exemption limit the appellants paid at full rate of duty in their invoice. This is not clear, as to why the appellants paid excess duty in respect of contract price. They have produced evidence by letter dated 12.1.2006 from buyer that they will not amend the purchase order dated 24.12.2005. The appellants failed to produce any such evidence showing that buyer refused to amend the purchase order dated 4.10.2005 which is applicable in the present case. Therefore, the Commissioner (Appeals) rightly rejected the refund claim.

5. Regarding the submission of the learned Counsel that the Commissioner (Appeals) passed the order beyond show cause notice, I find that the appellants produce letter dated 12.1.2006 in support of their purchase order dated 24.12.2005 and in this context the Commissioner (Appeals) had given the findings which cannot be beyond show cause notice. The case law of Gupta Soaps (supra) relied upon by the learned Counsel is in respect of Revenue's appeal filed before the Tribunal wherein it has been held that grounds not taken in the show cause notice cannot be taken by the Revenue in appeal. But in this case, the Commissioner (Appeals) had given this finding on the basis of evidence disclosed by the appellants. Therefore, the submission of the learned Counsel is not justified. Regarding the case law cited by the learned

Counsel, I find that all the case laws are in respect of unjust enrichment which is not the issue in this case and, therefore, the said case laws are not applicable.

6. In view of the above discussion, I do not find any reason to interfere with the order of the Commissioner (Appeals). Accordingly, appeal filed by the appellants is rejected.

(Dictated & pronounced in the Open Court.)

(P.K. DAS)
MEMBER (JUDICIAL)

RK