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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/282 /2009 – SM[BR] E/ STAY / 292 / 2009 –SM[BR] Date 06/08/2009

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

To :
M/S AKANKSHA STEELS PVT. LTD.
MORADABAD ROAD, SAMBHAL, MORADABAD.

M/S AKANKSHA STEELS PVT. LTD. Appellant
Vs
C.C.E. MEERUT II Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 877 / 2009 –SM[BR]&S/409/2009 dated 28.7.2009 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. MEERUT II
   OPP. SAHEED PARK (NEAR ASHOK KI LAT) DELHI ROAD, MEERUT (UP)
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 (Haryana)
16. Office Copy
17. Guard file

Assistant Registrar
(SM Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-IV

Date of hearing/decision: 28.7.2009

Stay Application No.292 of 2009 and
Central Excise Appeal No.282 of 2009

Arising out of the order in appeal No.128-129/CE/MRT-II/08 dt.29.10.08 passed by the Commissioner of Central Excise (Appeals), Meerut II.

For Approval and Signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	Yes
2	Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3	Whether their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

M/s Akanksha Steels P. Ltd. .... Appellants

Vs.

C.C.E.,Meerut II .... Respondent

Appearance:

Shri Rajesh Chhibber, Advocate for the appellants
Shri S. Gautam, Authorized Departmental Representative (SDR) for the Revenue

Coram: Hon'ble Mr. M. Veeraiyan, Member (Technical)

Final Oral Order No. 877/2009 SM(BR)
S-409/2009 SM(BR)

Per M. Veeraiyan:

After hearing both sides for a while on the stay petition I deem it appropriate to decide the appeal itself finally and accordingly, I waive pre-deposit of dues as per the impugned order and proceed to dispose of the appeal finally.

2. The appellant availed Cenvat credit in respect of certain capital goods received during the year 2003-04. They were eligible for total credit of

Rs.4,01,600/-; they took credit of Rs.2,00,800/- as first instalment during the year 2003-04 and the balance during the year 2004-05. The original authority disallowed the credit taken by the appellant for the year 2003-04 but allowed the second instalment of the credit taken during the year 2004-05. The Department came on appeal against the portion of the order allowing the credit of second instalment during the year 2004-05 and the party came on appeal against the disallowance of credit of first instalment during the year 2003-04. Commissioner (Appeals) rejected the appeal of the party and allowed the appeal of the Department and consequently, held that the entire amount of Rs.4,01,600/- is not eligible as credit. The penalty of Rs.10,000/- which was ~~also~~ imposed by the original authority was enhanced by the Commissioner (Appeals) to Rs.4,01,600/-. The disallowance was based on a finding that the appellant has claimed depreciation before the Income Tax authorities on the entire value of goods including the excise duty portion.

3. Learned Advocate submits that they have not claimed the credit in respect of that part of the value which represents the amount of duty on such ~~total~~ goods. He submitted that before the original authority and the Commissioner (Appeals), they produced the Chartered Accountant's Certificates and the balance sheet. Learned DR reiterates the finding of the Commissioner (Appeals)

4. I have carefully considered the submissions and perused the records. Both sides agree that the returns filed with the Income Tax Department for the concerned year would clearly indicate the actual value on which the claim has been made with the Income Tax Department. ~~The~~ Neither the Department sought for these details nor the assessee has produced these evidences before the lower authorities and therefore, the dispute is lingering. As these evidences will be relevant for deciding the dispute, I deem it proper to set aside the order of the lower authorities and remand the matter to the original authority for fresh consideration of the issue. The appellant is directed to produce the evidences within two months from the date of receipt

of this order and thereafter, the original authority shall decide the issue within one month after granting reasonable opportunity of hearing to the appellant.

4. The appeal is allowed by way of remand. Stay petition is also disposed of.

(M. Veeraiyan)
Member (Technical)

scd/