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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

Date 17/08/2009

Appeal No. E/1879/2007 – SM[BR]

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

To :
C.C.E. DELHI IV
NEW CGO COMPLEX, NH-IV, FARIDABAD,
HARYANA 121001.

Appellant
Vs

C.C.E. DELHI IV

Respondent

M/S MAHAVIR ELECTRICALS

I am directed to transmit herewith a certified copy of **Final order No**. 928 / 2009 –SM[BR] dated 31.7.2009 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
   M/S MAHAVIR ELECTRICALS
   PLOT NO 53, SMIE, PHASE-I, FARIDABAD
2. Adv. / Consult SHRI HEMANT BAJAJ ADV.
   A-5, BASMENT LAJPAT NAGAR –III NEW DELHI

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-1
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, COURT NO. IV

Excise Appeal No. 1879 of 2007-SM(BR)

[Arising out of Order-in-Appeal No. 40/CE/Appl/DLH-IV/2007 dated 13.4.2007 passed by Commissioner (Appeals), Central Excise, Delhi I]

For approval and signature:

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

1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	:	NO
2. Whether it should be released under Rule 27 of the 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

Commissioner of Central Excise
Delhi IV, Faridabad — Appellant

Vs.

M/s. Mahavira Electricals — Respondent

Appearance:

Mr. Iskitkhar Baig, SDR for the Appellant
Mr. Hemant Bajaj, Advocate for the Respondent

Date of Hearing/decision : 31.7.2009

ORAL ORDER NO. 928/2009 SM(BR)

Per M. Veeraiyan:

This is an appeal by the Department against the order of the Commissioner (Appeals) No. 40/CE/Appl/DLH-IV/2007 dated 13.4.07, against the dropping of penalty imposed under section 11AC by the original authority.

2. Heard both sides.

3. Relevant facts, in brief, are that the respondent is an assessee engaged in the manufacture of control panel. They have purchased Armoured cables and conductors and apparently, they have not used the same as inputs. When they received armoured cables and conductors, they have taken Cenvat credit of duty paid on said goods. Later on, the same was cleared as such raising excise invoice and paying excise duty. The original authority held that since the said goods have neither been used as inputs or nor can be considered as capital goods, taking of credit was irregular and payment of duty on armoured cables and conductors, as if manufactured by them using the Cenvat credit taken is also irregular. Accordingly, he confirmed the duty along with interest and imposed equal amount of penalty. The Commissioner (Appeals) while upholding the demand of duty, set aside the penalty imposed under section 11AC. Hence, the Department is in appeal.

4. Learned Advocate submits that the respondents were planning manufacturing certain new products and procured armoured cables and conductors and took credit to the tune of Rs.3,86,053/-. As they could not utilise the same due to change in circumstances, they decided to sell the

same to other parties who were requiring the same. The said inputs should have been cleared as such after reversing the credit taken by them. However, they cleared them on payment of central excise duty of Rs.3,08,372/-. On Audit's pointing out, they have also reversed the balance amount of credit of Rs.77,861/- taken by them. In addition, they have paid in cash along with interest, the duty amounting to Rs.3,08,372/-. It is a case of taking delivery of certain inputs which subsequently could not be used by them and in the process, apart from reversing the entire credit, they have paid the duty amounting to Rs.3,08,372/- plus interest. He submits that there is no intention whatsoever of evading excise duty. The question of invoking section 11AC does not arise. He seeks upholding of the order of the Commissioner (Appeals).

5. Learned SDR reiterates the findings of the original authority.

6. I have carefully considered the submissions from both sides. The case appears to be little strange. The respondent has not only reversed the entire credit but have paid substantial amount in cash towards duty which apparently, need not have been paid. I do not find any ingredients for attracting the provisions of section 11AC. There appears to be excess payment of duty and no short levy. There is no appeal filed by the party before me. The Commissioner's order in setting aside the penalty in the circumstances calls for no interference.

7. The appeal filed by the Department is therefore, rejected.

(M. Veeraiyan)
Member(Technical)

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