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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/4025/2006 – SM[BR] E / CO / 129 / 2008 –SM[BR] Date 21/08/2009

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

To :
C.C.E. RAIPUR
CENTRAL EXCISE BUILDING, DHAMTARI ROAD,
TIKRAPARA, RAIPUR 492001.

C.C.E. RAIPUR Appellant

Vs

M/S BEEKAY ENGG & CASTINGS LTD Respondent

I am directed to transmit herewith a certified copy of **Final order No 1052 / 2009 –SM[BR]**. dated 30.7.2009

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 BEEKAY ENGG & CASTINGS LTD
   27/28, LIGHT INDUSTRIAL AREA, BHILAI, DISTT- DURG(CG)
2. Adv. / Consult SHRI SANJAY GROVERADV.
   E-500 , GREATER KAILASH –II
   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-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: 30.7.2009

Central Excise Appeal No.4025 of 2006-SM
with Cross-Objection No.129 of 2008-SM

Arising out of the order in appeal No.65/RPR-II/2006 dated 25.6.06 passed by the Commissioner (Appeals), Customs & Central Excise, Raipur (C.G.).

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?	No
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

C.C.& C.Ex., Raipur .... Appellant

Vs.

M/s Beekay Engg. & Castings Ltd. .... Respondent

Appearance:

Shri R.K.Verma, Authorized Departmental Representative (DR) for the Revenue and Shri Sanjay Grover, Advocate for the respondent

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

Oral Order No. 1052/2009 SM (BR)

Per M. Veeraiyan:

1.1 Appeal No.E/4025/06 is by the Department against the order of Commissioner (Appeals) No. 65/RPR-II/2006 dated 25.6.06.

1.2 Cross-Objection No.E/CO/129/08 is connected with the above appeal. It is basically in support of the order of the Commissioner (Appeals).

1.3 As these two are inter connected, they are disposed of by this common order.

2. Heard both sides.

3.1 The relevant facts, in brief, are that the appellants are manufacturers of excisable goods falling under Chapters 72, 73, 84 & 86 of the First Schedule to The Central Excise Tariff Act, 1985. They have also been availing the benefit of modvat credit under rule 57A of the erstwhile Central Excise Rules, 1944. The Department observed that the appellants had received waste and scrap falling under sub-heading 7204.90 from M/s Hira Steels Limited , Raipur during the period June 1999 to October 1999 and had availed and utilised the credit amounting to Rs.1,66,703/- which appeared to be inadmissible to them. They also received waste and scrap from M/s Bansal Brothers, a registered dealer.The said waste and scrap supplied by registered dealer was in turn purchased from M/s Hira Steels Limited Raipur in March 2000 and the appellants availed credit and utilised the same to the extent of Rs.29,066/-.Since M/s Hira Steels Limited , Raipur was working under the provision of Section 3A of the Central Excise Act, 1944 and the waste and scrap generated from the factory was exempted in terms of Notification No.49/97-CE, dated 1.8.97, manufacturer could not have passed on the duty element by way of issuing invoices under the erstwhile Rule 52A. In doing so they had done it irregularly. Thus, the availment of credit by the appellants was irregular. Hence, two show cause notices were issued to the appellants for disallowance of the credit availed of amounting to Rs.1,66,703/- and Rs.29,066/- and for recovery of these amounts from them under rule 57 I of the erstwhile Central Excise Rules, 1944. It was also proposed to impose penalty on the appellants under rule 173Q of the erstwhile Central Excise Rules, 1944. After considering the submissions made by the appellants, the lower authority held that the availment of the credit and utilisation thereof was incorrect and ordered to be recovered. A penalty of Rs.20,000/- was also imposed on the appellants under Rule 173Q.

3.2 The Commissioner (Appeals) found that there was no order/decision by the competent authority that the supplier was covered under Section 3A of the Central Excise Act, 1944, to hold that invoice issued by the supplier -

manufacturer and the dealer to be invalid document for the purpose of allowing Cenvat credit by the officers in charge of the recipient unit .He has also held that prior to 13.2.2005, supplying unit could not be compelled to avail the exemption. Noting that there is no dispute about the payment of duty by the manufacturer and the credit has been validly passed on by the dealer he allowed appeal of the party.

4. Learned DR reiterates the grounds of appeal.

5. Learned Advocate submits that the demand relates to the period June, 1999 to October, 1999 and the supplying manufacturer namely, M/s Hira Steels Ltd. was working under the normal procedure in terms of the order of the Hon'ble High Court and paid duty on the waste and scrap supplied by them. The jurisdictional authorities in charge of the recipient firm have no authority to question the decision at the despatching end regarding whether Section 3 or Section 3A shall be applicable or whether the said supplier should have availed the Notification No.49/97-CE.

6. I have carefully considered the submissions from both sides. The submission made by the learned Advocate that the authority in charge of the recipient unit have no power to interfere with the assessment done at the end of the supplier unit, merits acceptance. Commissioner (Appeals) has rightly held that no evidence has been produced to hold that M/s Hira Steels Ltd.,Raipur was working under Section 3A procedure in discharge of their duty liability. Therefore, no valid grounds have been adduced for interference with the order of the Commissioner (Appeals).

7. The appeal filed by the Department is rejected. Cross-objection is also disposed of.

(M. Veeraiyan)
Member (Technical)

scd/