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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/2204/2007-2205/2007 – SM[BR] Date 24/09/2009

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

To :
C.C.E. JALLANDHAR(HQ. AT CHANDIGARH)
C.R.BUILDING, PLOT NO. 19, SECTOR 17-C,
CHANDIGARH.
C.C.E. JALLANDHAR(HQ. AT CHANDIGARH) Appellant
Vs
M/S CROWN INDS. (REGD.) Respondent

I am directed to transmit herewith a certified copy of **Final order No. 1157 - 1158 / 2009 SM[BR]** dated 24.7.2009 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 CROWN INDS. (REGD.)
   BASTI DANISH MANDAN, JALANDHAR
2. Adv. / Consult
   NONE;--------------------
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
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16 Office Copy
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Assistant Registrar
(SM Appeal Branch)

2. M/S PRINCE AGRO & ALLIED INDS.
   G.T. ROAD, MANDI GOBINDGARH

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
NEW DELHI, PRINCIPAL BENCH NEW DELHI

Excise Appeals Nos.2204-2205 of 2007-SM (BR)

[Arising out of Order-in-Appeal No.134-135/CE/Appl/Jal/2007 dated 27.04.2007 passed by the Commissioner (Appeals), Central Excise, Chandigarh]

Date of Hearing/ Decision:24.07.2009

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?	:	NA
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 ...Appellant
(Rep. by Shri S.N. Srivastava, SDR)

Vs.

(1)M/s. Crown Industries
(2)M/s.Prince Agro & Allied Industries ...Respondents
(Rep. by None.)

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

Final Order No.1157-1158/2009-SM(BR)/Dated:24.07.2009

Per P.K. Das:

These appeals are arising out of common order and, therefore, both are being taken up together for disposal.

2. The relevant facts of the case, in brief, are that the respondents no.1 had availed Deemed Modvat Credit of Rs.95,500/- under Notification No.58/97-CE dated 30.08.97 on the basis of the invoices issued by the Respondent No.2. It has been alleged that Respondent No.2, supplier of the inputs did not discharge their duty liability for the relevant months in respect of the said invoices and, therefore, the Respondent No.1 is not eligible to avail the Deemed Modvat Credit. Original Authority disallowed Modvat Credit of Rs.95,500/- and imposed penalty of Rs.10,000/- on Respondent No.1 and also imposed a penalty of Rs.2,500/- on Respondent No.2. The Commissioner (Appeals) set aside the adjudication order. Hence, Revenue filed these appeals.

3. After hearing the ld. DR and on perusal of the records, I find that the Respondent No.1 was engaged in the manufacture of M.S. Conduit Pipes classifiable under Heading No.7306.90 of the ~~Scheduel~~ Schedule to the Central Excise Tariff Act. They availed Deemed Modvat credit on the basis of the invoices issued by the Respondent No.2. The Deemed Modvat Credit is available on M.S. Flats/Parts under Notification No.58/97-CE (NT) dated 30.08.97. Para-4 of the said notification is reproduced below:-

> "4. The provisions of this notification shall apply to only those inputs which have been received directly by the manufacturer of the final products from the factory of manufacturer of the said inputs under the cover of an invoice declaring that the appropriate duty of excise has been paid on such inputs under the provisions of Section 3A of the said Act."

There is no dispute that the respondents availed the credit on the basis of the invoices issued by the Respondent No.2, wherein it is declared that, "goods under Rule 96ZP" .

4. The Original Authority observed that the Respondent No.2 had not discharged full and final duty liability under Section 3 A of the Central Excise Act and, therefore, the Respondent No.1 is not eligible to avail the Deemed Modvat Credit. On the other hand, Commissioner (Appeals) observed that the Respondent No.1 availed Credit on the basis of the invoices issued by the Respondent No.2, wherein the declaration as required under Notification No.58/97-CE (supra) was fulfilled. He relied upon the decision of the Hon'ble Punjab & Haryana High Court in the case of Vikas Pipes Vs. CCE, Chadigarh-II reported in 2003 (158) ELT 680 (P&H). The relevant portion of the decision of the Hon'ble Punjab & Haryana High Court is reproduced below:-

> "3. In that case the Tribunal had taken a contrary view and this Court had upheld the same holding that the deemed Modvat credit can be claimed in terms of Notification No.58/97- and that the only requirement of the notification is that the assessee should produce the invoices covering the goods in which the manufacturer should give a declaration that the manufacturer had suffered excise duty. In the case before us the show cause notice issued to the assessee itself points out that the suppliers have been declaring on these invoices that the inputs suffered excise duty but the Tribunal obviously

went wrong in holding that since excise duty had in fact not been paid by the supplier the assessee was not entitled to claim Modvat benefit. Since there is no requirement in the notification that the assessee has to lead evidence to show that the supplier had discharged its excise duty liability, we are clearly of the view that the Tribunal was in error in disallowing the Modvat credit to the assessee. Consequently, the aforesaid question which arises from the order of Tribunal is answered in favour of the assessee and against the Department holding that the assessee in the circumstances of the present case is entitled to the benefit of Modvat credit. The petition stands disposed of as above."

5. The Commissioner (Appeals) observed that the photocopies of the invoices involved in this case are available on record and said invoices contained in the declaration "goods cleared under Rule 96ZP" There is no requirement in the Notification that the assessee has lead to evidence to show that the supplier had discharged its excise duty liability. So, there is no reason to deny the credit. Ld. DR relied upon the decision of the Hon'ble Allahabad High Court in the case of Ankur Steel Juroutos Vs. CCE – 2005 (188) ELT 367 (Allahabad), which is related to the Deemed Modvat credit on M.S. Scrap vide Government's Order dated 1.3.94. I find that the decision of the Hon'ble Punjab & Haryana High Court in the case of Vikas Pipes (supra) is in connection with the Deemed Credit claimed in terms of Notification No.58/97-CE, which is applicable in the

present case. It is noted that para-5 of Notification No.58/97-CE (supra) provides that, " the provisions of this Notification shall not apply to inputs where the manufacturer of the said inputs has not declared the invoice price of the said inputs correctly in the documents issued at the time of their clearance from his factory."

6. In view of the above discussions, I do not find any reason to interfere the orders of the Commissioner (Appeals). Accordingly, both the appeals filed by the Revenue are rejected.

Order dictated & pronounced in open court on 24.07.2009.

(P.K. Das)
Member (Judicial)

Ckp.