TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

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/1405/2007 – SM[BR] Date 12/10/2009

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

To :
M/S COSMOS CASTINGS (INDIA) LTD.
299/1, JARWAY TENDWA ROAD, RAIPUR(C.G)

M/S COSMOS CASTINGS (INDIA) LTD. Appellant
Vs
C.C.E. RAIPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1226 / 2009 –SM[BR] dated 20.8.2009 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. RAIPUR
CENTRAL EXCISE BUILDING, DHAMTARI ROAD, TIKRAPARA, RAIPUR 492001.
2. Adv. / Consult
MR.SUSHIL KUMAR,CA
2/1, 2ND FLOOR, APPRAJITA COMPLEX, AKASHGANGA, SUPELA, BHILAI(CG)
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

CENTRAL EXCISE APPEAL NO. 1405 OF 2007-SM

[Arising out of Order-in-Appeal No. 30/RPR-I/2007 dated 9.2.2007 passed by the Commissioner (Appeals-I), Central Excise & Customs , Raipur]

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?	NO
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
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. Cosmos Castings (India) Ltd., Appellants

Vs.

C.C.E, Raipur Respondent

Appearance:

Shri A. Jaju, Advocate for for the assessee;
Shri S.N. Srivastava, DR for the Revenue

Coram:

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

Date of hearing/decision: 20th August, 2009

FINAL ORDER NO. 1226/2009 CM (BR) **dated** ______

Per P.K. Das:

The relevant facts of the case, in brief, are that the appellants are engaged in the manufacture of M.S. Ingots classifiable under Sub-heading No. 7206.90 of the Schedule to the Central Excise Tariff Act, 1985. The appellants were availing Cenvat Credit facility. They purchased three consignments from M/s. Maheshwari Udyog, Visakhapatnam under cover of duty paid Central Excise invoices issued by registered dealer. They availed credit on the inputs on the basis of invoices of M/s. Maheswari Udyog a registered dealer. It has been alleged that M/s. Maheshwari Udyog purchased the goods from M/s. A.S. Traders, Visakhapatnam who purchased the goods from manufacturer of goods i.e. Rashtriya Ispat Nigam Ltd., Visakhapatnam. It has further been alleged that M/s. A.S. Traders would be first stage dealer and Maheshwari Udyog would second stage dealer. So, invoice issued by Maheshwari Udygo on the basis of manufacturer's invoice is invalid document. A show cause notice was issued proposing demand of duty of Rs. 42, 668/- and imposition of penalty along with interest. Original authority dropped the show cause notice. Revenue filed appeal before the Commissioner (Appeals) whereby adjudication order was set aside. Hence, the appellants filed this appeal.

2. Learned Advocate on behalf of the appellants submits that there is no dispute that the goods were received by M/s. Maheswari Udyog directly from the manufacturer M/s. Rashtriya Ispat Nigam Ltd. and issued the invoice as registered dealer. He further submits that original authority dropped the proceedings after examining the report of the Suptd., Central Excise. He also submits that Maheswari Udyog purchased the goods from A.S. Traders has no relevancy. He relied upon the decision of the Tribunal in the case of CCE, Coimbatore vs. S.S.P.E. Cotton Mills (P) Ltd., reported in 1999 (106) ELT 102 (Tribunal).

3. Learned S.D.R. on behalf of the Revenue reiterates the findings of the Commissioner (Appeals). He submits that A.S. Traders purchased the goods from manufacturer who was not a registered dealer. He also submits that Maheswari Udyog issued the invoice as second stage dealer but, the goods were not received from first stage dealer and, therefore, documents issued by Mahewari Udyog are not valid documents. He also submits that the case law relied upon by the learned Advocate is not applicable on the ground that in the said case manufacturer's invoice indicates dealer's as well as assessee's names.

4. After hearing both sides and on perusal of the records, I find that the original authority observed that Maheswari Udyog had directly received the goods from manufacturer but purchased the same from A.S.

Traders, Visakhapatnam. For the purpose of proper appreciation, findings of the original authority are reproduced below:-

"Further M/s. Maheswari has received the goods directly from manufacturer of goods i.e. M/s. Rashtriya Ispat Nigam Ltd. under cover of proper duty paying document as reported by the Superintendent. Central Excise, Gajuwaka II, Range, Dwarkanagar, Visakhapatnam. Thus particulars of duty payment on the goods covered under the impugned invoices is not in doubt. Therefore although M/s. A.S. Steel Traders is not registered as Second Stage Dealers, the invoice issued by M/s. Maheswari Udyog is to be regarded as Second Stage Dealers Invoice. And, therefoe, credit shall be admissible on the invoices issued by M/s. Maheswari Udyog."

5. Commissioner (Appeals) observed that the goods having been purchased from A.S. Steel Traders, who are not registered with the department Maheswari Udyog does not attain the stage of second stage dealer and, therefore, invoice issued by Maheswari Udyog is invalid document. It is seen that the Superintendent of Central Excise in this respect stated that Maheswari Udyog directly received the goods from manufacturer under the cover of proper duty paying documents. There is no dispute regarding particulars of duty paid on goods as declared in the invoice. In the case of S.S.P.E. Cotton Mills (P) Ltd. (supra) the Tribunal held that there is no dispute that the duty paid goods actually reached the factory and used therein and Modvat credit cannot be denied. In the said

case invoice contained both the dealer's name as well as the assessee's name since the goods were purchased through dealer but directly supplied to assessee's factory and used therein. In the present case the goods were directly received from the manufacturer and supplied to the assessee. It appears that Rashtriya Ispat Nigam Ltd. manufacturer of goods supplied the material under the cover of invoice to Maheswari Udyog who issued the invoice as registered dealer, which is valid document.

6. In view of the above discussion, I find that impugned order passed by the Commissioner (Appeals) cannot be sustained and it is set aside. Accordingly, order of the Original authority is restored. Appeal filed by the appellants is allowed with consequential relief.

(Dictated & pronounced in the Open Court.)

(P.K. DAS)
MEMBER (JUDICIAL)

RK