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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/1320/2007 – SM [BR] Date 18/03/2009

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

To :
M/S RAMESH STEEL INDUSTRIES
G.E.ROAD, TATIBANDH, RAIPUR (C.G.)

M/S RAMESH STEEL INDUSTRIES — Appellant
Vs
C.C.E. RAIPUR — Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 219 / 2009 –SM[BR] dated 11.3.2009 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. BIPIN GARG ADV.
   B-1/1289-A, VASANT KUNJ NEW DELHI -70.

3 S.D.R
~~4 J.C.D.R.~~
5 Bar association, CESTAT, New Delhi
6 M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017
7 M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New - 3
8 Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9 Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10 Nidheshak publications, I.P.Estate, new Delhi
11 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12 Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai
13 Taxindiaonline.com Pvt.Ltd. B-XI/8183,Vasant Kunj, New Delhi - 110070
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-1
15 Office Copy
16 Guard file

Assistant Registrar
(SM Appeal Branch)

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
R.K. PURAM, W.B. NO.2, PRINCIPAL BENCH
NEW DELHI, COURT NO.I**

Excise Appeal No. 1320 of 2007

[Arising out of order-in-appeal No. 206/RPR-I/2006 dated 29.11.2006 passed by the Commissioner (Appeals), Central Excise & Customs, Raipur]

Date of Hearing/Decision : 06.02.2009

For approval and signature:

Hon'ble Ms. Jyoti Balasundaram, Vice-President

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?	No
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 Ramesh Steel Industries | Appellant
[Rep. by Mr. Atul Gupta, Advocate]

Versus

CCE, Raipur | Respondent
[Rep. by Mr. Sansar Chand, DR]

CORAM: Hon'ble Ms. Jyoti Balasundaram, Vice-President

Final Order No. 219/09-SM(BR)

Per Jyoti Balasundaram:

Claim for refund of Rs. 99,792/- filed by the appellant herein has been rejected on the ground of unjust enrichment.

2. I have heard both sides. The appellant who are engaged in the manufacture and clearance of excisable goods falling under chapter 72 of the First Schedule to the Central Excise Tariff Act, 1985 had supplied 71.280 MT of M.S. Ingots to M/s

Bajrang Metallics (Pvt.) Limited under four invoices all dated 28.02.2004 by charging excise duty of Rs. 1,99,584/- @ 16% adv. instead of Rs. 99,792/- leviable @ 8% adv., although the rate of duty on iron and steel products falling under chapter 72 had been reduced to 8% effective from 28.02.2004. This resulted in excess payment; the appellants intimated this fact to the consignee unit and reversed the excess cenvat credit. The assessee contend that the claim should not be rejected on the ground of unjust enrichment for the reason that the duty was not collected by them from their passengers.

3. I find from paragraph 5 and 5.2 of the adjudication order that the payment was made by the buyer after deducting the amount of duty. This therefore, confirms the stand of the appellant that the duty was not collected by them from their buyer. In these circumstances, the decision of the Larger Bench of the Tribunal in S. Kumar's Ltd., vs. CCE, Indore- 2003 (153) ELT 217 (Tri. LB) holding that the bar of unjust enrichment is not applicable when duty is not collected by the assessee is squarely applicable. The above decision has been followed in Peacock Industries Ltd., vs. CCE, Jaipur -2008 (227) ELT 609 (Tri.-Del.). In the case of Varinder Agro Chemicals Ltd., vs. CCE, Ludhiana -2006 (206) ELT 392 (Tri.-Del) the bar of unjust enrichment was held not to apply to goods collected from the customers and the decision has been upheld by the Hon'ble Punjab & Haryana High Court as seen from 2007 (219) ELT 160 (P&H). The SLP filed by the Revenue against the decision of Punjab & Haryana High Court cited supra has been dismissed. In the light of the above case laws cited and in the light of the fact that duty has not been collected from their buyer, the doctrine of unjust enrichment is held to be not applicable. Hence, I set aside the impugned order and allow the appeal.

[Dictated and pronounced in the open Court]

[Jyoti Balasundaram]
Vice President

[Pant]