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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/3208 – 3209 / 2007 –SM[BR] Date 19/11/2009

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

To :
M/S LIGHT LIFT INDS.
NO. 52, SECTOR 27A, FARIDABAD

M/S LIGHT LIFT INDS. Appellant
Vs
C.C.E. DELHI IV Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1453 – 1454 / 2009 –SM[BR] dated 13.11.2009 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. DELHI IV
   NEW CGO COMPLEX, NH-IV, FARIDABAD, HARYANA 121001.
2. Adv. / Consult
   MR.C.D. BANGA
   H.NO-115,SEC-16,FARIDABAD

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)

2. M/S LIGHT LIFT INDS.
NO. 52, SECTOR 27A, FARIDABAD

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

Appeals Nos.3208-3209/2007-SM Branch

[Arising out of Order-in-Appeal No.133 & 134/CE Appl/DLH-IV/2007 dated 19.11.2007 passed by the Commissioner of Central Excise (Appeals), Faridabad]

Date of Hearing/ Decision:13.11.2009

For approval and signature:
Hon'ble Mr. M. Veeraiyan, Member (Technical)

1. Whether Press Reporters may be allowed to see CESTAT (Procedure) Rules, 1982. Yes
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

M/s. Light Lift Industries ...Appellants
(Rep. by Shri C.D. Banga, Consultant)

Vs.

CCE, Delhi-IV ....Respondents
(Rep. by Shri S.N. Srivastava, SDR)

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

Final Order No. 1453-1454/2009 SM (Br) /Dated:13.11.2009

Per M. Veeraiyan:

These two appeals by the same appellant involve common issues and accordingly, are dealt with by a common order.

2. Heard both sides.

3. The relevant facts, in brief, are that the appellants are manufacturers of parts and accessories of motor vehicles as well as cranes and the appellants received bright bars falling under sub-heading no.7215.10 from manufacturers of such bright bars and have taken credit of duty paid on such bright bars. The appellants used such bright bars in the manufacture of parts of motor vehicles and parts of cranes. Show cause notices dated 29.12.2004 and 22.01.2005 were issued holding that drawing of wire from rods do not amount to manufacture and, therefore, the wire rods' manufacturers need not have paid any duty and, therefore, the appellants were not eligible for credit taken by them. The Original Authority dropped the proceedings on the show cause notices. On appeal by the department, the Commissioner (Appeals) has set aside the order of the Original Authority.

4. Ld. Consultant submits that bright bars are not the same as wire rods. The judgement holding drawing of wires out of wire rods does not amount~~s~~ to manufacture cannot be applied to bright bars. Even if the issue can be agitated, the same should have been agitated at the ends of manufacturers of the said bright bars. The appellants have not used the bright bars to draw any wires. The show cause notices issued do not make such allegations. Therefore interfering with the order of the Original Authority dropping the proceedings on the show cause notices is not justified.

5. Ld. SDR reiterates the findings and reasonings of the Commissioner (Appeals).

6. I have carefully considered the submissions from both sides. The show cause notices seek to disallow Cenvat credit availed by the appellants on bright bars used in the manufacture of motor vehicle parts and parts of cranes. The show cause notices have not indicated the nature of use of the bright bars by the appellants. Under these circumstances, no case has been made out in the show cause notice for invoking the judgement relating to drawing of wire from wire rods. That being the case, the question of and need for granting relief based on subsequent amendment to Rule 16 of Central Excise Rules, 2002 doe not arise. The dropping of proceedings by the Original Authority on the show cause notices is justified though the grounds taken by him may not be strictly valid. The Commissioner (Appeals) has set aside the order of the Original Authority. Such setting aside the order of the Original Authority, which was in favour of the assessees, in the normal course can only revive the show cause notices. As pleaded by the ld. Advocate, if there was any wrong payment of duty on the part of the manufacturers of bright bars, the Department should have taken action at their end. The Officer In-charge of the Units receiving the duty paid inputs are not entitled to question whether the inputs are excisable or whether the classification adopted by the despatching units are correct. Granting such authority to

the officers in charge of the recipient units shall lead to chaos. Under these circumstances, the order of the Commissioner (Appeals) questioning the excisability of the product received as inputs by the appellants cannot be sustained.

7. The orders of the Commissioner (Appeals) are set aside and the orders of the Original Authority, which are in favour of the appellants are restored.

Order dictated & pronounced in open court on 13.11.2009.

(M. Veeraiyan)
Member (Technical)

Ckp.