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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/2747/2007 – SM[BR] Date 04/12/2009

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

To :
M/S PREMIER INGOTS & METAL (P)LTD.
SARDHANA ROAD,KANKERKHERA, MEERUT

M/S PREMIER INGOTS & METAL (P)LTD. Appellant
Vs
C.C.E. MEERUT I Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1487 / 2009 –SM[BR] dated 1.12.2009 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. MEERUT I
   EXCISE CHOWK, UNIVERSITY ROAD, MANGAL PANDEY NAGAR, MEERUT - 250005.
2. Adv. / Consult
   MR.S. K. DHANDA & ASSOCIATES,
   "ELECTRA NILLA" NEAR DAYANAND HOSPITAL, BEGUM BRIDGE, MEERUT-250001(U.P.)

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 AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. III

Excise Appeal No. 2747 of 2007-SM(BR)

[Arising out of Order-in-Appeal No. 111/CE/MRT-I/07 dated 29.5.2007 passed by Commissioner (Appeals) Customs & Central Excise, Meerut I]

For approval and signature:

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

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1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the 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

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M/s. Premier Ingots & Metal Pvt. Ltd. — Appellants

Vs.

Commissioner of Central Excise
Meerut I — Respondents

Appearance:

Mr. S.K. Dhanda, Consultant for the Appellant
Mr. R.K. Saini, DR for the Respondent

Date of Hearing/decision : 01.12.2009

ORAL ORDER NO. 1487/2009 SM(BR)

Per M. Veeraiyan:

This is an appeal against the order of the Commissioner (Appeals) No. 111/CE/MRT-I/07 dated 29.5.2007

2. Heard both sides.

3. The relevant facts, in brief, are that the appellants are manufacturing copper alloys articles falling under Chapter 74 and they were clearing generally on payment of duty and were also availing modvat credit. Some consignments have been cleared by them in pursuance of CT 2 certificate issued by the authorities incharge of recipient units for availing of the benefit of Notification No. 3/01 CE dated 1.3.01 entry Sl. No. 253 subject to condition No. 47. The appellants admittedly informed the department vide letter dated 11.4.2000 about their clearing the goods without payment of duty in terms of said CT 2 certificates received by them. They have also apparently reversed the modvat credit attributable to inputs which have gone into such final products which have been cleared under CT 2 certificates. The original authority holding that the appellant have manufactured both dutiable and exempted products, confirmed the demand of 8% of value of the goods in terms of Rule 6(3) (b)(2). He also imposed penalty. The said order has been upheld by the Commissioner (Appeals).

4. Learned Consultant submits that they are manufacturing only one final product. There are no two final products, one dutiable and other exempted to attract the provisions of Rule 6(3)(b)(2). He also relies upon the decision

of the Tribunal in the case of Commissioner of Central Excise, Madurai vs. DCW Ltd. reported in 2009 (234) ELT 163 (Tri-Chennai) wherein it has been held that to attract provision of erstwhile Central Excise Rules 57CC (1) there should be one final product which is dutiable and another product which is exempted from payment of duty.

5. Learned DR reiterates the finding of the Commissioner (Appeals).

6. I have carefully considered the submissions from both sides. It is not in dispute that the appellants have manufactured only one variety of final product and in stray cases, they have cleared the said goods without payment of duty on the basis of end use based notification and on the strength of CT 2 certificates received from the consignees. The ratio of the decision in the case of DCW Ltd. will be applicable to the facts of the present case. Therefore, the appeal should succeed on merits. Further, all the facts have been placed by the appellant vide letter dated 11.4.2000 addressed to the Superintendent of Central Excise which fact has been noted by the original authority in his order. Therefore, the appeal deserves to be allowed on the aspect of time bar as well, as the show cause notice has been issued on 3.10.05 demanding duty for the period from 8/2001 to 12/2002.

7. In view of the above, the appeal is allowed with consequential relief as per law.

(M. Veeraiyan)
Member(Technical)

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