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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/2633/2007 – SM[BR]

Date 16/12/2009

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

To :
C.C.E BHOPAL
HOSHANGABAD ROAD, 48, ADMINISTRATIVE
AREA, AREA HILLS, BHOPAL (M.P.) 462011

C.C.E BHOPAL — Appellant

Vs

M/S D.K.ELECTROMECH CORPN. — Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1526 / 2009 –SM[BR] dated 10.12.2009 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   M/S D.K.ELECTROMECH CORPN.
   1-2, SECTOR-B, INDUSTRIAL AREA, GOVINDPURA, BHOPAL (MP)
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
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 NEW DELHI

Excise Appeal No.2633 of 2007-SM Branch

[Arising out of Order-in-Appeal No.45-CE/BPL/07-08 dated 6.7.2007 passed by the Commissioner of Central Excise (Appeals), Bhopal]

Date of Hearing/ Decision:10.12.2009

For approval and signature:

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

CCE, Bhopal ...Appellants
(Rep. by Shri V.K. Saxena, Jt.CDR)

Vs.

M/s. D.K. Electromech ....Respondent
(Rep. by None.)

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

Final Order No. 1526/2009 SM (BR)/Dated:10.12.2009

Per M. Veeraiyan:

This is Department's appeal against the order of the Commissioner (Appeals) No.45-CE/BPL/07-08 dated 6.7.2007.

2. None appears for the respondent in spite of notice. Heard the ld. Jt. CDR on behalf of the Revenue.

3. The respondent is engaged in the manufacture of excisable goods and are availing Cenvat Credit facility on inputs and capital goods. The respondents have also undertaken job work on materials received under Rule 4(5) (a) of the Cenvat Credit Rules supplied by the principal manufacturers. The Original Authority held that the goods manufactured on job work basis are exempted under Notification No.214/86 dated 25.03.1986, as amended. Inasmuch as, the respondents have not maintained separate accounts in respect of inputs used in the manufacture of goods cleared under Notification No.214/86, he confirmed demand of Rs.32,501/- in terms of Rule 6 of Cenvat Credit Rules along with interest. He also imposed a penalty of Rs.5,000/-. The Commissioner (Appeals) has held that the clearances of processed goods under Notification No.214/86 cannot be treated as clearances of exempted goods and set aside the order of the Original Authority.

4. Ld. Jt.CDR reiterates the reasoning of the Original Authority and also the grounds of appeal.

5. I have carefully considered the submissions of the ld. Jt. CDR and perused the records. The movement of inputs from the principal-manufacturer to a job worker and return of the processed goods from the job worker to the principal-manufacturer is governed, in the present case, by Notification No.214/86. In the normal course, the job worker, who clears the processed goods, is required to pay the excise duty at the time of clearance of the excisable goods. The Notification No.214/86 enables

the clearances of the goods without payment of duty by the said job worker "subject to the said suppliers undertaking the responsibility of discharging the liabilities in respect of central excise duty leviable on the final products." This notification basically shifts the responsibly from the job worker to the supplier of the inputs under Rule 4(5)(a) of the Cenvat Credit Rules. There is no exemption as such to the goods. Under these circumstances, the order of the Commissioner (Appeals) holding that such clearances cannot be treated as clearance of exempted goods does not suffer from any legal infirmity. Further, the Commissioner (Appals) has relied on the decision of the Tribunal in the case of Sterlite Industries (I) Ltd. Vs. CCE, Pune reported in 2005 (183) ELT 353 (Tribunal-Larger Bench) and the decision of the Tribunal in the case of Kinetic Engg. Ltd. Vs. CCE, Pune reported in 2007 (208) ELT 526 (Tribunal-Mumbai). In the grounds of appeal, it has been stated that against the said decisions of the Tribunal, the Department has gone on appeal. This is not sufficient ground to interfere with the decision of the Commissioner (Appeals). It is not the case of the Department that the said decisions of the Tribunal have been stayed or set aside by the higher forum.

6. In view of the above, the appeal is rejected.

Order dictated & pronounced in open court on 10.12.2009.

(M. Veeraiyan)
Member (Technical)

Ckp.