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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/2734/2007-2735/2007 – SM [BR] Date 29/10/2009

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

To :
M/S METAL FAB (INDIA)
E-181,INDL. ESATE, PHASE-VII, S.A.S.NAGAR
(MOHALI) PUNJAB

M/S METAL FAB (INDIA) Appellant

Vs

C.C.E. CHANDIGARH Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1323 – 1324 / 2009 –SM[BR] dated 18.9.2009 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. CHANDIGARH
   C.R. BUILDING, PLOT NO. 19, SECTOR 17-C, CHANDIGARH 160017
2. Adv. / Consult
   MR.AJAY JAIN
   1293, SEC 18-C, CHANDIGARH
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)

3. M/S RINE MACHINE TOOLS
B-61. INDL.ESTATE. [JASE-VII. S.A.S. NAGAR (MOHALI)PB

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No. 2, R.K. Puram,
NEW DELHI

<u>COURT No. III</u>

<u>CENTRAL EXCISE APPEAL NO. 2734-35 of 2007-SM</u>

[Arising out of Order-in-Appeal No. 250-252/CE/CHD/2007 dated 12.7.2007 passed by the Commissioner (Appeals), Central Excise, Chandigarh]

Dated of hearing/decision: <u>18th September, 2009</u>

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?	
2.	Whether it would 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?	
4.	Whether order is to be circulated to the Departmental authorities?	Yes

M/s. Metal Fab (India),
M/s. Rine Machine Tools — Appellants

Vs.

CCE, Chandigarh — Respondent

Appearance:

Shri Ajay Jain, Advocate for the appellants;
Shri Sunil Kumar, JDR for the Revenue

Coram:

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

FINAL ORDER NO. 1323 - 1324 / 2009 SM (BR) **dated**

Per P.K. Das:

Both appeals arise out of common order and, therefore, both are being taken up together for disposal.

2. The issue involved in this case is in respect of availability of credit of service tax paid on outward transportation to the appellants as input service credit. The Commissioner (Appeals) rejected the appeal following the decision of the Tribunal in the case of Gujarat Ambuja Cement Ltd., reported in 2007 (6) STR 249 (Tri. – Del.), against which the assessee filed appeal before the Hon'ble Punjab & Haryana High Court. Hon'ble High Court answered the question of law against the Revenue and in favour of the assessee as reported in 2009 (14) STR 3 (P&H). Larger Bench of the Tribunal in the case of ABB Ltd. vs. CCE & ST, Bangalore, reported in 2009 (15) STR 23 (Tri. LB) held as under:-

"In the result, we answer the reference by holding that the services availed by a manufacturer for outward transportation of final products from the place of removal should be treated as an input service in terms of Rule 2(1)(ii) of the CENVAT Credit Rules, 2004 and thereby enabling the manufacturer to take credit of the service tax paid on the value of such services."

3. In view of decisions of the Hon'ble Punjab & Haryana High Court and Larger Bench of the Tribunal the impunged orders are set aside. Both the appeals are allowed with consequential relief.

(Dictated & pronounced in the Open Court.)

(P.K. DAS)
MEMBER (JUDICIAL)

RK