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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/1536/2007 – SM[BR] WITH E / CROSS/ 285 / 2007-SM[BR] Date 04/11/2009

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

To :
C.C.E. RAIPUR

CENTRAL EXCISE BUILDING, DHAMTARI ROAD,
TIKRAPARA, RAIPUR 492001.

C.C.E. RAIPUR — Appellant

Vs

M/S A.B.S..STEEL (P)LTD. — Respondent

I am directed to transmit herewith a certified copy of **Final order No. 1397 / 2009 –SM[BR]** dated 29.9.2009 assed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent

   M/S A.B.S..STEEL (P)LTD.

   INDUSTRIAL ESTATE,BHILAI, DISTT DURG (C.G)

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, COURT NO. IV

Excise Appeal No. 1536 of 2007-SM(BR) with
E/Cross/285/07-SM(BR)

[Arising out of Order-in-Appeal No. No. 44,45,46 & 47/RPR-II/2007 dated 28.2.07 passed by Commissioner (Appeals), Customs & Central Excise, Raipur]

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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Commissioner of Central Excise
Raipur — Appellants

Vs.

M/s. A.B.S. Steel (P) Ltd. — Respondent

Appearance:

Shri M.K. Rastogi, SDR for the Appellant
None for the Respondent

Date of Hearing/decision : 29.9.2009

ORAL ORDER NO. 1397/2009 SM (BR)

Per M. Veeraiyan:

1. This is an appeal filed by the Department against the order of the Commissioner (Appeals) No. 44,45,46 & 47/RPR-II/2007 dated 28.2.07. The cross objection 285/07 is connected to the above appeal.

2. None appeared on behalf of the parties.

3. The relevant facts, in brief, are that M/s. A.B.S. Steel (P) Ltd. purchased inputs from SAIL, BSP etc. The inputs received initially had suffered payment of 8% duty and the inputs received during latter period was on payment of 12% duty at the hands of the supplying units, namely, SAIL and BSP. They cleared on sale some quantity of inputs as such to one M/s. DM Engineering Ltd. They were selling at an increased price. While clearing, the party paid duty by utilising the Cenvat credit and they paid on the higher rate of 12% i.e on the higher value. The original authority ordered recovery of excess utilised credit amounting to Rs.5,88,692/-. He also imposed penalty of Rs.20,000/- each on M/s. A.B.S. Steel P. Ltd. and M/s. DM Engineering Ltd.. On appeal, Commissioner (Appeals) held that M/s. A.B.S. Steel (P) Ltd. by utilising the excess credit has ,in fact, paid excess duty to the Government accounts and, therefore, the question of recovery of demand as ordered by the original authority did not arise.

4. Learned SDR reiterates the findings and reasoning of the order of original authority and the grounds of appeal. He also relies on the decision of the Tribunal in the case of Eicher Tractors vs. CCE, Jaipur reported in [2004 (175) ELT 277] wherein it has been held that the duty liability of the

inputs already stand determined and discharged at the time of first removal from the factory of the manufacturer and there is no provision in the Central Excise law for reassessment of goods.

5. I have carefully considered the submissions of the learned SDR and perused the records. It is not being disputed that M/s. A.B.S. Steel Pvt. Ltd. has taken the credit rightly but the stand of the Department is that the party has utilised excess credit and, as remedial action, the excess credit utilised is sought to be recovered. There is a clear contradiction. When M/s. A.B.S. Steel P. Ltd. admittedly utilised excess credit, it amounts to paying excess duty. That being the case, the question of demanding duty to the extent of excess duty paid by them, does not sound logical or legal. Therefore, the order of the Commissioner (Appeals) in setting aside the order of the original authority is reasonable and legal. No valid grounds adduced to interfere with the order of the Commissioner (Appeals). Therefore, the appeal by the Department is rejected. The cross objection by the party M/s. A.B.S. Steel (P) Ltd. is in support of the order Commissioner (Appeals) and accordingly the same is also disposed of.

(M. Veeraiyan)
Member(Technical)

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