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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. ST/753 - 754 /2010 – SM [BR] Date **21/01/2011**

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

To :
C.C.E. MEERUT II
OPP. SAHEED PARK (NEAR ASHOK KI LAT) DELHI
ROAD, MEERUT (UP)
C.C.E. MEERUT II Appellant

Vs

M/S SANDEEP ELECTRODES PVT. LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 67 – 68 /2011 **SM[BR]** dated 28.12.2010 passed by the Tribunal under **Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax**

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
M/S SANDEEP ELECTRODES PVT. LTD.
BULANDSHAHAR ROAD, HAPUR,
DISTT. GHAZIABAD. (U.P.)
2. Adv. / Consult SHRI BIPIN GARG ADV.
B-1/1289-A, VASANT KUNJ NEW DELHI
3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New Delhi
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
9. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
10. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
13. Office Copy
14. Guard file

Assistant Registrar
(SM Appeal Branch)

2. M/S SANDEEP ELECTRODES PVT. LTD.
BULANDSHAHAR ROAD, HAPUR,
DISTT. GHAZIABAD. (U.P.)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
SINGLE MEMBER BENCH

Excise Appeal No.753 & 754 of 2010-SM

(Arising out of Order-in-Appeal No.25-26-ST/MRT-II/2010 dt. 15.02.2010 passed by the CCE & C (Appeals), Meerut-II)

Date of Hearing: 28.12.2010
Date of Decision: 28.12.2010

For approval and signature:
Hon'ble Mr.Rakesh Kumar, Member (Technical)

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 should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3	Whether Their Lordships wish to see the fair copy of the Order?	
4	Whether Order is to be circulated to the Departmental authorities?	

CCE, Meerut-II — Appellant
Vs.
M/s.Sandeep Electrodes (P) Ltd. — Respondent

Present for the Appellant: Shri S.K.Bhaskar, SDR
Present for the Respondent: Ms.Sukriti Das, Advocate

Coram: Hon'ble Mr.Rakesh Kumar, Member (Technical)

Final **ORDER NO.** 67-68/2011 SM (Br)

PER: RAKESH KUMAR

The facts giving rise to these appeals are, in brief, as under:-

1.1 The respondent are manufacturers of welding electrodes chargeable to Central Excise duty. They avail the facility of cenvat credit of Central Excise duty paid on the inputs and capital goods ~~out~~ and of service tax paid on the input service as per the provisions of Cenvat Credit Rules, 2004. The period of dispute in these appeals is from October,2006 to March, 2007 and April, 2007 to September,2007 During this period, the respondent, as recipient of GTA service paid the service tax by utilizing the cenvat credit. The total service tax paid on GTA service by utilizing the cenvat credit was Rs.7,587/-. The department was of the view that since the GTA service received by the respondent was not their output service and since cenvat credit on input and capital goods taken by the respondent could be utilized by them only for payment of central excise duty on their finished goods, and service tax on their output service, the payment of service tax on GTA service by utilizing cenvat credit is wrong and service tax on GTA service should have been paid through cash. It is on this basis, that the show cause notices were issued to the respondent for payment of service tax alongwith interest and for imposition of penalty on the respondent. The service tax demands were confirmed against the respondent by the Assistant Commissioner. On appeal to the Commissioner (Appeals) against the order of the Assistant Commissioner, the Commissioner (Appeals) while upholding the demand set aside the penalty on the respondent. The department has come up in appeals against the order of the Commissioner (Appeals) setting aside the penalty.

2. Heard both sides.

3. Shri S.K.Bhaskar, the learned DR, assailed the impugned order of the Commissioner (Appeals) setting aside the penalty, reiterating the grounds of appeals and emphasised that the respondent have contravened the provisions of Cenvat Credit

Rules, 2004, and therefore they were liable for penalty under Rule 15 of Cenvat Credit Rules, 2004 read with Section 76 of the Finance Act, 1994, and that the Commissioner (Appeals) wrongly waived the penalty.

4. Ms.Sukriti Das, Advocate, learned Counsel for the respondent defending the impugned order pleaded that since during that period there were conflicting judgements of the Tribunal on the issue as to whether the service tax on GTA service as service recipient could be paid through cenvat credit, there was no malafide intention on the part of the respondent on payment of service tax on the GTA service, through cenvat credit account.

5. I have carefully considered the submissions from both the sides and perused the records. The only point of dispute in this case is as to whether the respondent are liable for penalty for payment of service tax by utilising cenvat credit. Since during that period, there were conflicting judgements of the Tribunal on this issue, and as such there is nothing on record from which any malafide intention can be inferred on the part of the respondent, I am of the view that there is no infirmity in the impugned order in setting aside the penalty on the respondent. The Revenue's appeals are, therefore, dismissed.

(Pronounced in the open court)

(RAKESH KUMAR)
MEMBER (TECHNICAL)

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