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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

Date **22/06/2011**

Appeal No. **E/1818/2009 – SM[BR]**

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

To :
M/S V.K.VALVES PVT. LTD.
C-106, FOCAL POINT EXTN. JALANDHAR.

M/S V.K.VALVES PVT. LTD. Appellant
Vs
C.C.E. JALLANDHAR(HQ. AT CHANDIGARH) Respondent

I am directed to transmit herewith a certified copy of **Final order No. 329 / 2011-SM[BR]** dated 14.6.2011 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. JALLANDHAR(HQ. AT CHANDIGARH)
C.R.BUILDING, PLOT NO. 19,
SECTOR 17-C, CHANDIGARH.

2. Adv. / Consult
MR.HARVINDER SINGH,ADV
34/10, RAJ NAGAR, KAPURTHALA ROAD, SUNNY BISTER BHANDAR,
JALANDHAR.

3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications. Customs. Excise. I.P. Estate. New
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. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi -
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
COURT NO. III

Excise Appeal No. 1818 of 2009-SM(BR)

[Arising out of Order-in-Appeal No. 49-CE/APPL/Jal/09 dated 12.3.2009 passed by the Commissioner of Central Excise (Appeals), Chandigarh]

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. V.K. Valves Pvt. Ltd. Appellants

Vs.

Commissioner of Central Excise Respondent
Jalandhar

Appearance:

Shri Harminder Singh, Advocate for the Appellants
Shri R.K. Gupta, DR for the Respondent

Date of Hearing/decision : 14.6.2011

Final

ORAL ORDER NO. 329/2011 SM (BR)

Per M. Veeraiyan:

1. Heard both sides.

2. The appellant is a manufacture of ball valves. One consignment of 3300 pieces of ball valves were sent to one party of name Bath Well by invoice No. 241 dated 26.8.06 on payment of duty. The appellant received back 2112 pieces of ball valves as rejected under the cover of invoice No. 1/06-07 dated 23.12.06 issued by Bath Well. The appellants received the defective goods for repair and reconditioning under Rule 16 and took credit of duty originally paid by them. It is on record that the goods received back have been taken in RG I and cleared on payment of duty, subsequently after repairing the goods. The credit taken stands disallowed on the ground that the credit has been taken on the basis of invoices issued by Bath Well who is not registered with Central Excise Department as a dealer.

3. Learned Advocate submits that in a case of taking credit under Rule 16, when the buyer was returning the goods as defective and the said goods requires to be cleared on payment of duty subsequently. There is no stipulation that buyers should be registered under Central Excise Act. He also submits that invoice issued by the buyer who returned the goods is for accounting purpose and credit has been taken only based on the original invoice of the appellants under which the goods have been dispatched to Bath Well on payment of duty.

4. Learned SDR reiterates the findings and reasoning of Commissioner (Appeals).

5. I have carefully considered the submissions and perused the records. It is not a case of taking credit of duty on cenvatable goods sold by a registered dealer. It is a case of the manufacturer initially clearing the goods on payment of duty and part of the goods having been received back on the ground that the same were found to be defective and for the purpose of repair or reconditioning. It is not disputed that the goods have been received under Rule 16 of the Central Excise Rules. The explanation that the invoices issued by Bath Well is for accounting purposes and for return of originally supplied goods has been overlooked. Further the claim that the appellants have taken credit based on original invoices under which the returned goods were cleared on payment of duty has been overlooked.

6. In view of the above, the appellant has made out a case for interfering with the order of the Commissioner (Appeals). The order of Commissioner (Appeals) is set aside and the appeal is allowed with consequential relief, as per law.

(M. Veeraiyan)
Member(Technical)

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