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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 24/06/2011

Appeal No. **E/2580/2009 – SM[BR]**

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

To :
C.C.E. JAIPUR I
N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME,
JAIPUR 302005.

C.C.E. JAIPUR I Appellant

Vs

M/S PREMIER BARS PVT. LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No. 338 /2011-SM[BR]** dated 16.6.2011 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
M/S PREMIER BARS PVT. LTD.
A-16, BAGRU INDUSTRIAL AREA,
PHASE-II, BAGRU, JAIPUR.

2. Adv. / Consult SHRI BIPIN GARG ADV.
B-1/1289-A, VASANT KUNJ NEW DELHI-70.

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
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)

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

Excise Appeal No.E/2580/09-SM

(Arsing out of Order-in-Appeal No.156(DK)CE/JPR-I/2009 dated 22.7.2009 passed by the CCE (A), Jaipur)

For approval and signature:
Hon'ble Mr.M.Veeraiyan, 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?	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, Jaipur-I — Appellants

Vs.

M/s.Premier Bars Pvt.Ltd. — Respondent

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

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

Date of Hearing/decision: 16.06.2011

Final **ORDER NO.** 338/2011 SM (Br)

PER: M.VEERAIYAN

This is an appeal by the department against the order-in-appeal No.156(DK)CE/JPR-I/2009 dated 22.7.2009.

2. Heard both sides.

3. The investigation by the officers against M/s.R.M.Mittal Steel (P) Ltd by way of visit to the factory premises on 27.12.07 indicated that there was shortage of 40.960 MT of MS Ingots. The investigation revealed that out of 40.960 MT, 30.960 MT were sent to M/s.Premier Bars (P) Ltd, (the present respondents) on two invoices bearing No.900 and 901 both dated 27.12.07. The invoices were found to have been authenticated by the authorized signatory. However, it was found to be parallel set of invoices. M/s.R.M.Mittal Steel (P) Ltd admitted their mistake and paid the duty involved on 40.960 MT including 30.960 MT sent to the respondents and the amount was paid on 31.12.07. However, when the officers visited the premises of the respondents on 28.12.07, it is claimed that neither the goods nor the two invoices nor the vehicle which was used for transport was available. However, the representative of the respondents' company admitted having received the consignment and taking the credit based on the authenticated invoices issued by M/s.R.M.Mittal Steel (P) Ltd. It is submitted that the supplier has paid the entire duty involved including 25% of the penalty and the matter stands closed at their ~~own~~ end. The present dispute relates to eligibility to credit to the respondents. The original authority held that instead of genuineness ~~of~~ invoices, parallel invoices were issued when the goods were removed on 27.12.07 and therefore the benefit of credit cannot be allowed to the respondents and accordingly he demanded duty of Rs.1,12,836/- and imposed equal amount as penalty. The Commissioner (Appeals) has set aside the order.

4. Learned SDR submits that the goods have been originally removed by the supplying unit on parallel invoices. But for the

intervention of the officers, duty due would not have been paid. The goods have been cleared without payment of excise duty. Merely because the duty stands paid by the supplying unit on 31.12.07, due to timely detection by the officers, the credit to the respondents is not available since the goods were clandestinely removed by the supplying unit.

5. Learned Advocate for the respondents strongly supports the order of the Commissioner (Appeals). There is no evidence that the respondents were knowing that the supplying unit attempted any fraud. They have received the goods under authenticated invoices and taken credit accordingly.

6. I have carefully considered the submissions and perused the records. The reasoning of the Commissioner (Appeals) in allowing the appeal of the respondents is reproduced below:-

"It is observed that when inputs have been received on the strength of proper invoices specified under Rule 9 of Cenvat Credit Rules, 2004 wherein duty particulars have also been shown which has to be paid by 5th of the following month as provided under Rule 8 of Central Excise Rules, 2002, I do not find any plausible reason to deny the credit of the same to the appellant. The appellant vide letter dated 24.3.2009 has produced copy of ER-1 return of M/s.RMS which shows that duty involved in the subject invoices has been paid. I therefore hold that appellant are rightly eligible to cenvat credit of Rs.1,12,836/- taken on the strength of invoice No.900 & 901 both dated 27.12.07 issued by M/s. RMS."

7. I find that supplying unit has no doubt attempted/indulged in evasion of duty. The goods stands accounted in the production records and that is how the shortage was detected. The goods

stand cleared on parallel invoices. However, the duty on the goods stands paid before due date of payment i.e. on 5.1.08 as the duty stands paid on 31.12.07. As far as the respondent is concerned, undoubtedly they have received the goods on the basis of authenticated invoices and there is no doubt that they have received the goods and utilized the same for intended purposes. In view of the above, extending the credit to the respondents by the Commissioner (Appeals) calls for no interference.

8. The appeal of the department is rejected.

(Pronounced in the open court)

(M.VEERAIYAN)
MEMEBR (TECHNICAL)

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