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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/1854/2009 – SM [BR]** Date **01/07/2011**

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

To :
C.C.E. INDORE

MANIK BAGH PALACE, POST BOX NO. 10, INDORE
452001 (M.P.)
C.C.E. INDORE Appellant

Vs

M/S SHRIPATI STEEL TUBES PVT. LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No. 368 / 2011 –SM[BR]** dated 22.6.2011 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 SHRIPATI STEEL TUBES PVT. LTD.
TARAGANJ INDUSTRIAL AREA,
A.B.ROAD, SARANGPUR, DISTT.
RAJGARH.

2. Adv. / Consult
MR.BIPIN GARG
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
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 & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

COURT NO. II

Date of Hearing : 22.6.2011

Excise Appeal No. 1854 of 2009-SM

[Arising out of the Order-in-Appeal No. IND-I/87/2009 dated 31.3.2009 passed by the Commissioner (Appeals), Customs and Central Excise, Indore]

Coram:

Hon'ble Mr. Mathew John, Member (Technical)

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	Yes
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 Whether their Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	No

CCE, Indore — Appellant

Vs.

M/s Shripati Steel Tubes Pvt. Ltd. — Respondent

Appearance:

Appeared for Appellant : Ms. Renu Jagdave,SDR
Appeared for Respondent : Ms. Sukriti Das, Advocate

CORAM: Hon'ble Mr. Mathew John, Member (Technical)

Final Order No. 368/2011 SM (BR) dated............

Per Mathew John:

The Respondents are manufacturers of Steel Tubes and Pipes and avail Cenvat credit on raw materials, under provisions of the

Cenvat Credit Rules 2004. The Respondents had received imported H.R. Steel Strips under Bill of Entry No. 709978 dated 03-04-2007. The Respondents took credit of the Additional Duty of Customs equal to Central Excise duty and Educational Cess on that duty, during 12-04-07 to 16-04-07. On 30-04-2007, the Respondents also took Cenvat credit on Special Additional Duty of Customs. However this material was cleared as such from the factory during 12-04-07 and 16-04-07. At the time clearance the Respondents reversed duty equivalent to Central Excise duty and Education Cess on that duty but did not reverse duty equivalent to SAD amounting to Rs. 5,16,590/-. This matter was noticed during the visit of the officers to the factory and the Respondents were asked to reverse the said amount. The Respondents reversed such amount on 24-07-2007.

2. Thereafter a SCN dated 22-08-2008 was issued asking the Respondents why the said amount should not be recovered as per provisions of section 11 A (1) of the Central Excise Act and penalty should not be imposed on the Respondent under section 11 AC of the Act read with Rule 15 of Cenvat Credit Rules 2004. The SCN was adjudicated by confirming the demand and imposing penalty equal to the said amount. The Commissioner (Appeal) confirmed the duty demanded and the adjustment of the amount already paid. However he reduced the penalty to Rs. 5,000/- under Rule 15 (1) of Cenvat Credit Rules 2004. Aggrieved by the order of the Commissioner (Appeal) Revenue has filed this appeal before the Tribunal.

3. The main ground in the appeal is that by the time the impugned credit was taken the goods have already been removed from the factory. So the credit was taken with malafide intention. It is further argued that if the officers had not noticed the matter the Respondent would not have reversed the amount wrongly taken.

4. The Ld. Counsel for the Respondent explain that when the goods were sold by them they had paid VAT equal to 4% of the value of the goods. SAD is levied in lieu of VAT. If VAT is paid, any importer is eligible to get refund of the SAD paid in terms of notification No. 102/2007-Cus dated 14-09-2007. So they thought they were doing the right thing by claiming such refund through the CENVAT route and that is the reason that they took the credit. They say that they had no

malafide intention in the matter and the Commissioner (Appeal) reduced penalty on account of this argument only and it is a valid ground for imposing lesser penalty. They did not contest the amount already reversed by them.

5. When goods are imported SAD has to be paid except in some special cases. Where SAD is paid the importer can take credit of such duty under Cenvat Credit Scheme if he is a manufacturer, consuming the imported goods in his manufacturing process. There is also a provision that if the importer sells the goods on payment of VAT, he can claim refund of such SAD paid, from Customs Authorities by producing evidence of VAT paid. In this case goods were sold and not consumed in manufacture. So the latter course of action should have been taken for getting relief from the incidence of duty which need not be borne by the Respondents. This is case of choosing wrong course of action rather than attempt at evasion of duty.

6. So I do not find any merit in the argument of Revenue to increase penalty on the Respondents. Therefore the Appeal is rejected.

(Pronounced in open Court)

(Mathew John)
Member (Technical