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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/1481/2011 – SM[BR] &E / STAY /1892/2011-SM[BR] **Date 29/11/2011**

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

To :
M/S METRO TYRES LTD
B-27, METRO ROAD, FOCAL POINT, LUDHIANA.

M/S METRO TYRES LTD Appellant

Vs

C.C.E. LUDHIANA Respondent

I am directed to transmit herewith a certified copy of **Final order No. 840 /2011-SM[BR]&S/813/2011** dated 11.11.2011 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. LUDHIANA
CENTRAL EXCISE HOUSE, 'F'
BLOCK, RISHI NAGAR,
LUDHIANA 141001 (PUNJAB)

2. Adv. / Consult
MR.G.S.BHANGOO
H.NO. 5, SECTOR-10A, CHANDIGARH.

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
PRINCIPAL BENCH, COURT NO. III

Excise Appeal No. 1481 of 2011 SM
Excise Stay Application No. 1892 of 2011 SM

[Arising out of Order-in-Appeal No. 64/ CE/ LDH/ 2010 dated 28.2.2011 passed by the Commissioner of Central Excise (Appeals), Chandigarh]

For approval and signature:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)

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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? : No
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : No
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. Metro Tyres Ltd. — Appellants

Vs.

Commissioner of Central Excise
Ludhiana — Respondent

Appearance:

Shri Vikrant Kackria, Advocate for the Appellants
Shri R.K. Verma, SDR for the Respondent

Date of Hearing/decision : 11.11.2011

Final **ORAL ORDER NO.** 840/2011 SM (BR) +
S- 813/2011 SM (BR)

Per Archna Wadhwa:

As the appellants have deposited the entire duty confirmed against them by denying the benefit of modvat credit, I dispense with the condition of pre-deposit of penalty amount and proceed to decide the appeal itself inasmuch as the short issue is involved.

2. After hearing both the sides, I find that the said credit stands denied on the ground that the same has been availed on the basis of photocopies of invoices which is not permissible under the law. It is the contention of the learned advocate that total 10 invoices are involved. Out of the said 10 invoices, they have been able to get the certificates from the Range office of the invoice supplier declaring ~~deciding~~ that the duty stands paid by the invoice supplier. He submits that they are not in a position to get the identical certificate in respect of balance invoices. He draws my attention to the Tribunal's decision in the case of Ceekay Daikin Ltd. vs. CCE, NOIDA as reported in [2005 (191 740 Tri-Kol) as also in the case of Dhaulgiree Polylefins (P) Ltd. as reported in [2002 (147) ELT 843 (Tri-Kol)] as also in the latest decision of the Hon'ble Gujarat High Court in the case of Steelco Gujarat Ltd. as reported in [2010 (255) ELT 518 (Guj)]. My attention also stands drawn to Hon'ble Punjab and Haryana judgement in the case of CCE, Chandigarh vs. Stelko Strips Ltd. as reported in [2010 (255) ELT 397 (P&H)]. The ratio of the said decisions is that

modvat credit can be availed on the basis of photocopies provided that there is no dispute about receipt of inputs as also their duty paid character which can be provided by proper certification by the Central Excise officers having jurisdiction over the invoice supplier.

3. In view of the above, I set aside the impugned order and remand the matter to the original adjudicating authority for reconsidering the issue involved, after giving an opportunity to the appellants to get the balance invoices attested by the Range Superintendent having jurisdiction over the invoice supplier and in accordance with the law declared in the above decisions.

4. Stay petition as also appeal gets disposed of in the above manner.

(Pronounced in the open Court)

(Archana Wadhwa)
Member(Judicial)

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