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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/1469/2011 – SM[BR] E/ STAY /1872 /2011-SM[BR] **Date 29/11/2011**

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

To :
M/S MEHAK METALS PVT LTD

G-599-623, UPSIDC INDL AREA, MASURI
GULAWATHI ROAD, DISTT- GHAZIABAD.
M/S MEHAK METALS PVT LTD Appellant

Vs

C.C.E. MEERUT I Respondent

I am directed to transmit herewith a certified copy of **Final order No. 841/2011-SM[BR]&S/814/2011** 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. MEERUT I
EXCISE CHOWK,OPPOSITE
CHOUDHARY CHARAN SINGH
UNIVERSITY MANGAL PANDAY
NAGAR, MEERUT - 250005.
2. Adv. / Consult
MRS.RENU GUPTA,ADVOCATE
1058, SECTOR-3, R.K.PURAM, N DELHI-22

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.1469 of 2011 SM
Excise Stay Application No. 1872 of 2011 SM

[Arising out of Order-in-Appeal No. 38/ CE/ MRT-II/ 2011 dated 25.2.2011 passed by the Commissioner of Customs & Central Excise (Appeals), Meerut II]

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. Mehak Metals Pvt. Ltd. — Appellants

Vs.

Commissioner of Central Excise
Meerut I — Respondent

Appearance:
Ms. Renu Gupta, Advocate for the Appellants
Shri Fateh Singh, DR for the Respondent

Date of Hearing/decision : 11.11.2011

Final **ORAL ORDER NO.** 841/2011 SM (BR) & S-814/2011 SM(BR)

Per Archna Wadhwa:

After dispensing with the condition of pre-deposit of duty and penalty, I proceed to decide the appeal itself with the consent of both the sides as a short issue is involved.

2. Modvat credit to the extent of Rs.5,28,942/- stands denied to the appellant on the allegation that the same stands filed on the basis of photocopies of the duplicate copy of the invoices. The appellant took a categorical stand before the authorities below that the original and duplicate copies were lost, photo copies were obtained and credit taken. They prayed for verification of the above fact from jurisdictional Central Excise authorities about the invoice supplied. It seems that said report was asked for from the said authorities. However, before the same could be supplied, the show cause notice was issued and adjudicated. The said adjudication order was upheld by the Commissioner (Appeals).

3. Learned Advocate appearing for the appellant, draws my attention to a report dated 13.6.2011 submitted by the Superintendent of the invoice supplier. She submits that inasmuch as the said report ws neither available at the time of adjudication nor available at the time of first appellate proceedings and therefore, prays that demand be set aside and matter may be remanded for fresh adjudication in the light of the above report. She also placed reliance on the High Court judgement in the case of CCE, Vadodara vs. Steelco Gujarat Ltd. as reported in [2010 (255) ELT 518 (Guj)].

4. Learned DR appearing for the respondents agrees with the course of action suggested by the learned advocate.

5. Inasmuch as admittedly the said report dated 13.6.2011 as regards the duty paid character of the inputs was not available before the authorities below, I set aside the impugned order and remand the matter back to the adjudicating authority for denovo decision after taking into consideration the said report as also the judicial decision of various judicial and quasi judicial authorities.

6. The 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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