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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/686 /2005 – SM[BR] Date 16/03/2010

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

To :
SRF LTD.

INDL. AREA, MALANPUR, DISTT. BHIND, M.P.

SRF LTD. Appellant

Vs

C.C.E. GWALIOR Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 318 / 2010 –SM[BR] dated 8.3.2010 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. GWALIOR

19/1265, CITY CENTRE, OPP. TOUCHTEL, GWALIOR, M.P.
474011

2. Adv. / Consult

MR.R. KRISHNAN

297-E, POCKET-II, PHASE-I, MAYUR VIHAR DELHI-110091.

3 S.D.R
4 ~~J.C.D.R.~~
5 Bar association, CESTAT, New Delhi
6 Director Publications, Customs, Excise. I.P. Estate, New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11 M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
12 Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
13 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15 LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
16 Office Copy
17 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. 686 of 2005-SM(BR)

[Arising out of Order-in-Appeal No. 239/2004 dated 24.11.2004 passed by Commissioner (Appeals), Customs & Central Excise, Gwalior]

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? : 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. S.R.F. Ltd. ... Appellants

Vs.

C.C.E., Gwalior .... Respondent

Appearance:

Shri R. Krishnan, Advocate for the Appellants
Shri I. Baig, SDR for the Respondent

Date of Hearing/decision : 8.3.2010

ORAL ORDER NO. 318/2010 SM(Br)

Per M. Veeraiyan:

This is an appeal against the order of the Commissioner (Appeals) No. 239/2004 dated 24.11.2004.

2. Heard both sides.

3. The appellants are receiving furnace oil in sealed tankers from Indian Oil Corporation. The invoices issued by Indian Oil Corpn. is on the basis of kiloliters. The appellants at the time of receiving weighs the tanker with the furnace oil before unloading and also the tanker after unloading the oil to arrive at the weight of the consignment. It also appears that dip reading was undertaken at the appellant's premises and the quantity in terms of volume arrived on the basis of dip reading method was found to be lower than the quantity mentioned in the invoice. The appellants have taken credit of duty paid for the entire quantity as mentioned in the invoice. The original authority held that Cenvat credit amounting to Rs.7,75,377/- is not available to them on the ground that there was shortage in goods received during the period October, 2002 to June, 2003 and he also imposed equal amount as penalty.

4. On appeal, the Commissioner (Appeals) upheld the order of the demand and interest but reduced the penalty to Rs.3 lakh.

5. Learned Advocate for the appellants submits that the very same issue relating to earlier period has been decided by the Division Bench of the Tribunal vide Final Order No. 1055/05-Ex dated 20.12.05 in Appeal No. E/814/04-Ex and the same have been followed by the Division Bench of the Tribunal vide Final Order No. 363/06 dated 7.2.06 in Appeal No. E/1736/04. He submits that the Tribunal in earlier orders has taken into account that at the time of filling of furnace oil in the tankers by the Indian Oil Corporation, the same is done at very high temperature of 88° C and when the unloading

takes place it is at a substantially lower temperature and hence the specific gravity is increased leading to reduction in volume. Accordingly, Tribunal held that credit of duty paid on entire quantity as per invoice was available.

6. Learned SDR submits that the basis for extent of volume reduction based on change in temperature has not been substantiated by the appellants before the lower authorities.

7. I have carefully considered the submissions from both sides. The order of Tribunal especially the one dated 20.12.05 has gone into the above dispute in detail and it has been held as under:-

> "4. After hearing ld. DR, we fully agree with the above contention of ld. Advocate. The sealed tankers were not found to be tempered with so as to bring the same under the risk of removing furnace oil eroute. The duty has been paid by IOC on the full tanker quantity as reflected in their invoices and the same quantity has been received by them. The difference in quantity shown by the Stores department based upon the temperature change and as a result of change in specific gravity cannot be made the basis to deny the benefit of credit to the appellant in respect of that quantity. Accordingly, we set aside the impugned order and allow the appeal with consequential relief to the appellant."

8. Inasmuch as the very same issue relating to very same appellants have been decided by the Division Bench of the Tribunal relating to earlier period in favour of the appellant, following the same, the appeal is allowed with consequential relief as per law.

(M. Veeraiyan)
Member(Technical)

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