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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/ 863 – 864 / 2008 –SM[BR] Date 03/09/2010

Assistant Registrar
C.E.S.T.A.T, New Delhi
To :
1. M/S GAUTAM STEELS TRADERS
2. M/S GAUTAM STEELS TRADERS
B-20, NEHRU GROUND,N.I.T,FARIDABAD-121001.

M/S GAUTAM STEELS TRADERS Appellant
Vs
C.C.E. DELHI IV Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 936 – 937 / 2010-SM[BR] dated 26.8.2010 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. DELHI IV
NEW CGO COMPLEX, NH-IV, FARIDABAD, HARYANA 121001.
2. Adv. / Consult
MR.N.L.JANGIR
1530,SECTOR21-D,FARIDABAD
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 Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
10 Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
11 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
12 LAWCRUX Advisors Pvt Ltd. LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
13 TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
14 Office Copy
15 Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX
APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. IV

Excise Appeal No. 863 of 2008-SM(BR)

[Arising out of Order-in-Appeal No. 149 & 150/CE/ Appl/DLH-IV/2007 dated 17.1.2008 passed by the Commissioner of Central Excise (Appeals), Fardidabad.]

Excise Appeal No. 864 of 2008-SM(BR)

[Arising out of Order-in-Appeal No. 151 & 152/CE/ Appl/DLH-IV/2007 dated 17.1.2008 passed by the Commissioner of Central Excise (Appeals), Fardidabad.]

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? : 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

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The Gautam Steel Traders — Appellants

Vs.

Commissioner of Central Excise
Faridabad — Respondent

Appearance: Shri K.K. Sharma, Advocate for the Appellants
Shri *Anil Khanna*, SDR for the Respondent

Date of Hearing/decision : 26.08.2010

Final **ORAL ORDER NO. 936-937/2010 SM (BR)**

Per M. Veeraiyan:

These two appeals are by the same appellant and involve same issues and, therefore, they are being dealt with by common order.

2. Heard both sides.

3. The appellant was registered as a dealer in terms of Rule 2(ij) of Cenvat Credit Rules for the purpose of passing of Cenvat credit on duty paid materials procured by them. The goods manufactured by M/s. Swastika Pipes Ltd. were sold to M/s. Rameshwar Das Devi Dayal (P) Ltd. but consigned to the appellants. The appellants holding themselves as first stage dealers sold it to another registered dealer who in turn sold to the actual user-manufacturer of the final products. The credit to the manufacturer stands denied on the ground that the goods had passed through registered dealers namely M/s. Rameshwar Das Devi Dayal (P) Ltd., M/s. Gautam Steels Traders and M/s. Metal Trading Company and that the same has happened because of mis-declaration of the status of the appellants as first stage dealer while they are only a second stage dealer. The original authority in the case dealt with in appeal No. E/ 863/2008 imposed a penalty of Rs.10,000/- where irregular credit involved was Rs.5109/- and in the case dealt with in Appeal No. E/864/2008 imposed a penalty of Rs.25,000/- where irregular credit involved was Rs.1,02,729/-.

4. Learned Advocate for the appellants submits that as the appellant received the goods as consignment agent, they were under the bonafide belief that the sale by them will be considered as sale by the first stage dealer. Further, in the case of similar issues involving the appellant in Appeal No. 683/2008 Final order No. 115/2010-SM dated 19.1.2010 penalty was waived on the manufacturer/user. Therefore, he prays that the penalties on the appellants may be set aside.

5. Learned SDR supports the order of the Commissioner (Appeals). He also relies on the decision of the Tribunal in the case of commissioner of Central Excise, Delhi IV vs. Sai Ram Industries reported in 2010 (255) ELT 256.

6. I have carefully considered the submissions from both sides and perused the records. The appellants have received the inputs manufactured by M/s. Swastika Pipes Ltd. sold to one M/s. Rameshwar Das Devi Dayal (P) Ltd. though the goods have been directly received by them from M/s. Swastika Pipes Ltd. They had purchased the goods only from M/s. Rameshwar Das Devi Dayal (P) Ltd. who was also a registered dealer. That being the case, the appellants posing as first stage dealer selling the goods to another dealer before the goods were sent to the manufacturer-user was not justified. When there is specific restriction that the goods can be routed through maximum two dealers while passing on the credits, the appellants as registered dealers ought to have followed the same. The explanation offered by them is not convincing. Therefore, the penalties are justified.

7. However, considering the entire facts and circumstances of the case, I dispose the appeal No. E/863/2008 by reducing the penalty imposed on the appellant from Rs.10,000/- to Rs.3,000/- (Rupees Three thousand only). The appeal No. E/864/2008 is disposed of by reducing the penalty imposed on the appellant from Rs.25,000/- to Rs.10,000/- (Rupees Ten thousand only).

(M. Veeraiyan)
Member(Technical)

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