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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/1636/2010 – SM[BR] E/ STAY/1632/2010-SM[BR] Date 26/11/2010

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

To :
M/S. AGARWAL ALUMINIUM
F-91, IST PHASE, BORANADA IND. AREA, JODHPUR
(RAJ.)

M/S. AGARWAL ALUMINIUM Appellant

Vs

C.C.E. JAIPUR II Respondent

I am directed to transmit herewith a certified copy of **Final order** No.1301/2010-SM[BR]&S/580/2010 dated 8.10.2010 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. JAIPUR II
   N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.
2. Adv. / Consult
   MR.OM P.AGARWAL & CO.
   56, SECTION 7, N.P.H ROAD, JODHPUR(RAJ)

3 S.D.R
~~J.C.D.R.~~
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)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
BENCH-SM

Date of Hearing/Decision:08.10.2010

Excise Stay Application No.E/S/1632/10-SM in Excise Appeal No. 1636/10-SM

[Arising out of Order-in-Appeal No.163/KKG/CE/JPR-II/10 dated 25.03.2010 passed by the Commissioner (Appeals-II), Customs & Central Excise, Jaipur].

M/s. Agarwal Aluminium, Jodhpur ...Appellant

Vs.

CCE, Jaipur-II ... Respondent

Present for the Appellant :None
Present for the Respondent:Shri Anil Khanna, SDR

Coram: HON'BLE MR. D.N. PANDA, JUDICIAL MEMBER

Final **ORDER NO.** 1301/2010 SM (Br) & S-580/2010 SM (Br) **DATED:08.10.2010**

PER: D.N.PANDA

None present for the appellant. The appellant prays to dispense pre-deposit following the decision of Tribunal in the case of Indian Oil Corporation Ltd. vs. CCE, Jaipur 2006 (75) RLT 676 (Trib.). Perusal of the appellate order throws light that when the appellant availed credit on photo copy of quadruplicate copy of invoice and did not inform the Department about such methodology, there was denial of Cenvat Credit to the extent of Rs.11,039/- with penalty of equal amount under rule 15 (2) read with Section 11AC of Central Excise Act 1944 imposed. The show cause notice indicated that there was a confusion of the authorities to invoke the penalty provision. There are specific mandates by Rule 15 (1), 15 (2) of Cevat Credit Rules 2004. Law does not intend an assessee to suffer under confusion, when penal consequences were proposed by show cause notice. This observation is sufficient to send the matter back to ld. Adjudicating authority to come to a conclusion, whether he is able to find a case in favour of Revenue under Rule 15 (1) or Rule 15 (2) of the Cenvat Credit Rules 2004. When confusion persists the appellant's prayer is that there is already a Division Bench decision in their favour in the case of Indian Oil Corporation Ltd. reported in 2006 (75) RLT 676 (Trib.). It would be proper to remit back the matter to resolve the issue properly arriving at a proper conclusion, as to which sub-rule is appropriate sub-rule for levy of penalty and whether the decision cited shall come to rescue of the appellant.

2. With the aforesaid scenario, the pre-deposit is dispensed and the matter is remanded to ld. Adjudicating Authority to grant fair opportunity of hearing and pass a reasoned and speaking order.

3. In the result, both Stay Application and appeal are disposed.

[Dictated & Pronounced in the open Court].

(D.N.PANDA)
JUDICIAL MEMBER

Anita