

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

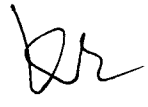
Assistant Registrar
C.E.S.T.A.T, New Delhi

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

Appellant
Vs
Respondent

C.C.E. JAIPUR II

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 Publications 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

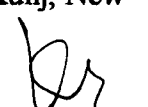
11 Easy Service Tax Online Dot Com Pvt.Ltd.407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad-15

12 LAWCRUX Advisors Pvt Ltd, LAW House, 1-8, Sector - 10, Faridabad 121003 (Harvana)

13 TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor, Vasant Arcade, Nelson Mandela Road, Vasant Kunj, New Delhi - 110070

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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

ORDER NO. 1301/2010 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 extend 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 Id. 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 Cevat 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 Id. 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