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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/797 /2008-798 /2008 – SM[BR] Date 06/07/2010

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

To :
C.C.E. CHANDIGARH
C.R. BUILDING, PLOT NO. 19, SECTOR 17-C,
CHANDIGARH 160017
C.C.E. CHANDIGARH Appellant

Vs

M/S ISHDEEP ENTERPRISES, Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 693- 694 / 2010-SM[BR] dated 24.6.2010 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   M/S ISHDEEP ENTERPRISES,
   NEAR 66 KV GRID,MANDI GOBINDGARH.
2. Adv. / Consult
   NONE;---------------

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)

3. M/S ISHDEEP ENTERPRISES,
NEAR 66 KV GRID,MANDI GOBINDGARH.

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

Date of Hearing/Decision:11.06.2010

Excise Appeal No.797-798/08-SM

[Arising out of Order-in-Appeal No.51-52/CE/CHD/2008 dated 18.01.2008 passed by the Commissioner (Appeals) Chandigarh].

CCE, Chandigarh ...Appellant

Vs.

M/s.Ishdeep Enterprises and Others ... Respondent

Present for the Appellant :Shri.S.K. Bhaskar, JDR
Present for the Respondent: None

Coram: HON'BLE MR.DN.PANDA, JUDICIAL MEMBER

Final **ORDER NO.** 693 - 694 / 2010 SM (BR) **DATED:11.06.2010**

PER: D.N.PANDA

Neither the respondent is present today nor there is any application for adjournment.

2. The question involved in this appeal is whether the inputs was moved from its origin to the destination. Ld. Adjudicating authority by his order clearly brings out that the vehicle that has claimed to be used for transportation of inputs was not at all registered under Motor Vehicle Act in the records of the RTA the Registering authority. The moment such a finding is on record, there was reasonable doubt on the part of the ld. Adjudicating authority to infer that the modus operandi of the

appellant was questionable. Hence, the appellant claimed cenvat credit only on the basis of paper received without goods being received in its factory. This finding has been made by the authority in respect of appeal No.E/797/08.

3. So far as the appeal No.E/798/08 is concerned, ld. Adjudicating authority noticed that the transports claimed to have been used were scooters and auto cycles as well as motor cycles, which is coming out from para 4.8 of the Order-in-Original. The authority doubted about the capability of those transport modes to carry the inputs of bulk in nature. The goods were iron and steel items.

4. Despite aforesaid finding of the ld. Adjudicating Authority which is fully based on evidence, the appellate authority throwing burden of proof on the revenue held that cenvat credit is admissible in respect of the inputs because those were received being followed by a discloser in the RT 12 returns about the payment of out put tax.

5. Notice was served on the appellant. But that was returned back. Ld. DR submits that Tribunal having considered all these aspects questioning the capability of transportation of the goods and genuineness of vehicles and non-receipt of the goods at the recipient's end remanded the cases for verification in the case of Ranjeev Alloys Ltd. vs. CCE, Chandigarh reported in 2009 (236) ELT 124 (Trib. Delhi). Against such decision, in appeal before the Hon'ble High Court in CA No. 67 of 2009 disposed on 18.8.09, not only the

Hon'ble High Court dismissed appeal of assessee, it was also held that the appeal being misconceived cost of Rs.5000/- was ordered to be payable.

6. When the position of law is established from the order of Hon'ble High Court of Punjab & Haryana in the aforesaid case, there is no point to dilate the matter further. Consequently, the findings aforesaid calls for allowing the appeal of revenue restoring the Order-in-Original in toto setting aside the first appellate order in both the cases.

[Dictated & Pronounced in the open Court].

(D.N.PANDA)
JUDICIAL MEMBER

Anita