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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/408 /2010 – SM[BR] E / STAY / 410 / 2010-SM[BR] Date 19/07/2010

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

To :
M/S MAHENDRA SPONGE & POWER LTD.
PLOT NO. 76-77, SILTARA INDUSTRIAL AREA,
PHASE-II, SILTAR, RAIPUR. (C.G.)

M/S MAHENDRA SPONGE & POWER LTD. Appellant

Vs

C.C.E. RAIPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 757/2010-SM[BR] &S/301 /2010 dated 9.7.2010 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. RAIPUR
   CENTRAL EXCISE BUILDING, DHAMTARI ROAD, TIKRAPARA, RAIPUR 492001.
2. Adv. / Consult
   MR.RAMESH NAIR
   LAKSHMI VIHAR, AG- 192, SCHEME NO. 54, VIJAYNAGAR, INDORE(MP)
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. III

Excise Appeal No. 408 of 2010-SM(BR)
Excise Stay Application No. 410 of 2010-SM(BR)

[Arising out of Order-in-Appeal No. 47/RPR-I/2009 dated 17.9.2009 passed by the Commissioner of Central Excise (Appeals), Raipur (CG)]

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? : NO

M/s. Mahendra Sponge & Power Ltd. Appellants

Vs.

Commissioner of Central Excise Raipur Respondent

Appearance: Shri Ramesh Nair, Advocate for the Appellants
Shri S.K. Bhaskar, DR for the Respondent

Date of Hearing/decision : 09.07.2010

Final **ORAL ORDER NO.** 757/2010 SM(Br) & S-301/2010 SM(Br)

Per M. Veeraiyan:

After hearing both sides for a while on the stay petition, the pre-deposit as per the impugned order is waived and appeal itself taken up for final disposal.

2. The original authority denied the credit of Rs. 3,19,302/- and order recovery of the same along with interest and imposed equal amount as penalty. Commissioner (Appeals) has partly allowed the appeal and confirmed demand to the tune of Rs.1,98,675/- along with interest and upheld the penalty of equal amount.

3. Learned Advocate for the appellants submits that as per the show cause notice, substantial part of the demand relates to Service Tax paid on insurance premium which was alleged to be relating to cars. The Service Tax credit taken relating to insurance of cars was to the tune of about 27,000/- only and rest of the Credit relates to other insurance services relating to plant, machinery, electrical insulation and building, power plant, electrical equipments and insurances relating to machinery break down etc. He fairly concedes that this factual position could not be placed specifically before the original authority and the Commissioner (Appeals) and regrets for the inconvenience caused.

4. Learned DR submits that the break up on insurances as relating to different aspects are being brought before the Tribunal for the first time and matter has not been considered by the authorities below.

5. In the facts and circumstances of the case and in the interest of justice, the order of the Commission (Appeals) in so far as the same relate to denial

of credit amounting to Rs.1,98,675/- and imposition of equal amount of penalty is set aside and the matter is remanded to the original authority to consider the claim of the appellants. The appellants are directed to produce the evidence they want to rely upon within 45 days from today. The original authority shall pass the order within 2 months after expiry of time limit for submission of defence reply by the appellants and after granting reasonable opportunity of hearing.

5. The appeal is allowed by way of remand as above. Stay petition is also disposed of.

(M. Veeraiyan)
Member(Technical)

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