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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/651 /2007,1597/2007 – SM[BR] Date 22/07/2010

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

To :
C.C.E. LUCKNOW
7-A, ASHOK MARG, LUCKNOW

C.C.E. LUCKNOW Appellant
Vs
M/S KAMLAPUR SUGAR & INDS. LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 781 – 782 / 2010 –SM[BR] dated 12.7.2010 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   M/S KAMLAPUR SUGAR & INDS. LTD.
   KAMLAPUR, DISTT SITAPUR
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 KAMLAPUR SUGAR & IND. LTD
KAMLAPUR, SITAPUR

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

Excise Appeal No. 651 of 2007-SM(BR)
Excise Appeal No. 1597 of 2007-SM(BR)

[Arising out of Order-in-Appeal No. 158/CE/LKO/2006 dated 30.10.2006 passed by the Commissioner (Appeals) Central Excise & Service Tax, Lucknow]

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

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Commissioner of Central Excise
Lucknow — Appellants

Vs.

M/s. Kamlapur Sugar & Indus. Ltd.. — Respondents

Appearance: Shri M.K. Rastogi, DR for the Appellants
None for the Respondent

Date of Hearing/decision : 12.07.2010

Final **ORAL ORDER NO. 781-782/2010 SM (Br)**

Per M. Veeraiyan:

1.1 Appeal No. E/1597/2007 is by the party against the order of the Commissioner (Appeals) No. 158/CE/LKO/2006 dated 30.10.2006.

1.2 Appeal No. E/651/2007 is by the department against the very same impugned order.

2. None appears for the party inspite of the notice. On earlier occasions also, the party was not represented. The original authority denied credit on steel items and welding electrodes and ordered recovery of Rs.87,208/- and imposed a penalty of Rs.40,000/-. On appeal by the party, the Commissioner (Appeals) upheld the order of demand and set aside the penalties. The department is in appeal seeking restoration of the penalty imposed by the original authority. The party is in appeal seeking setting aside the order of the demand.

3. Learned SDR submits that party's appeal deserves to be rejected in view of the fact that the credit is not admissible in the light of the decision of Larger Bench of Tribunal in the case of Vandana Global Ltd. vs. CCE, Raipur reported in [2010 (253) ELT 440]. On the other hand, he seeks restoration of penalty as imposed by the original authority.

4. I have carefully considered the submissions made by the department and perused the records. The party is not serious in pursuing the appeal as they were not represented inspite of notice. Therefore, the appeal No. E/1597/2007 is dismissed for non-prosecution.

5. As regards the appeal by the Department seeking restoration of penalty, it is noticed that the dispute relates to eligibility of credit on steel

items on which there were differing decisions of the Tribunal in force during the relevant period. Therefore, there is no justification for sustaining the penalty. The order of the Commissioner (Appeals) does not call for interference. The appeal by the department is also rejected.

(M. Veeraiyan)
Member(Technical)

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