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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/2223/2008-2224/2008 – SM[BR]   Date 17/08/2010

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 FRIENDS ALLOYS PVT. LTD.   Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 895 – 896 / 2010-SM[BR] dated 4.8.2010 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 FRIENDS ALLOYS PVT. LTD.
VILL. BATED, BAROTIWALA. DISTT. SOLAN (H.P.)
2. Adv. / Consult SHRI AJAY JAIN ADV.
1293 SECTOR-18-C, CHANDIGARH

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. SH. R.S. MALIK, PARTNER OF,
M/S FRIENDS ALLOYS PVT. LTD., VILL. BATED,
BAROTIWALA, DISTT. SOLAN (H.P.)

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

Date of Hearing/Decision:04.08.2010

Excise Appeal No.E/2223 & 2224/08-SM

[Arising out of Order-in-Appeal No.392-93/CE/CHD/2008 dated 05.08.2008 passed by the Commissioner (Appeals), Chandigarh].

CCE, Chandigarh ...Appellant

Vs.

M/s.Friends Alloys (P) Ltd. ... Respondent

Present for the Appellant :Shri.S.R. Meena, DR
Present for the Respondent:Shri.Ajay Jain, Advocate

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

Final **ORDER NO.** 895 - 896/2010 SM-BY **DATED:04.08.2010**

PER: D.N.PANDA

Revenue has come in appeal against order passed by the ld. First Appellate Authority holding that the case was not proved against the appellant before him. He noticed the fact that the adjudicating authority has not given any finding as to under what law, the appellant was working and whether it was required to issue any invoice. The Department could not bring out any evidence to show the intention of evasion of duty by the appellant.

2. Shri Meena, ld. DR submits that when the appellant's driver failed to show the document accompanying the goods,

the nature of the claim of the respondent has failed to establish its bonafide. Therefore, confiscation was made. So also penalty was imposed. But the ld. Appellate Authority made the respondent charge free for no good reason.

3. Ld. Counsel appearing on behalf of the respondent submits that the accompanying document of the goods was Invoice No. No.000314 dated 22.9.06. The respondent was entitled to the area wise exemption for which no duty was paid. When the goods were supported by document and its title was established, confiscation was unwarranted and imposition of penalty was bad in law. Therefore, ld. Commissioner (Appeal) has passed appropriate order.

4. Heard both sides and perused the records.

5. There is no law to grant blanket exemption if there is abuse of law. But the show cause notice without bringing out abuse of law, has only proceeded under the premises that the goods carried by Truck No. HP64-5799 loading MS Ingots was without any supporting document. In the premises of a third party that is M/s. Mitul Steel Industries, investigation team found a truck on 22.9.2006. When the driver was examined, he stated that the goods were transported from the factory of the respondent which were loaded into the truck on 21.9.06 night and reached the destination on 22.9.06. Ld. Appellate Authority below has failed to scrutinize the origin and destination of the goods, the time involved as well as the distance involved, arrival time of the vehicle at the

investigation spot, the time when the trucks had passed through Check gate and also the time when the invoice No.000314 dated 22.9.2006 was raised by the respondent. Had the Authority below examined the departure time of the Truck and the time of preparation of the invoice, material facts would have come to light. He has also not examined the time between departure of the truck and the arrival of the truck at the destination. There is nothing examination done about the different times the truck has passed through different check gates. The Check gates seal appearing on the invoice 000314 dated 22.9.06 does not disclose the date. The receipt issued by Transport Authority also does not carry the name of the driver but name of somebody else. Certainly the decision of the learned Appellate Authority is miserable. But nothing can be done at this stage when the show cause notice has not proceeded in the manner the examination ought to have been done as highlighted above. When the allegations has not been done in appropriate manner the respondent has to succeed because he has not faced the charges at the initial stage of adjudication on the aforesaid points. Most painfully Revenue's both appeals are bound to be dismissed. That is ordered accordingly.

[Dictated & Pronounced in the open Court].

(D.N.PANDA)
JUDICIAL MEMBER

Anita