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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/2323/2008 – SM[BR]** Date **03/08/2011**

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

To :
M/S E.C.E. INDUSTRIES LIMITED.

A-20, INDUSTRIAL AREA, MEERUT ROAD,
GHAZIABAD.

M/S E.C.E. INDUSTRIES LIMITED. Appellant

Vs

C.C.E. GHAZIABAD Respondent

I am directed to transmit herewith a certified copy of **Final order No. 436 / 2011 –SM[BR]** dated 12.7.2011 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. GHAZIABAD
C.G. O. COMPLEX-II, KAMLA
NEHRU NAGAR, GHAZIABAD
201302

2. Adv. / Consult
MR.S.D.GAUR
SB-108, SHASTRI NAGAR, GHAZIABAD.

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi -
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

Assistant Registrar
(SM Appeal Branch)

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

Date of Hearing/Decision:12.07.2011

Excise Appeal No. E/2323/08-SM

[Arising out of Order-in-Original No.147-CE/GZB/2008 dated 30.07.2008 passed by the Commissioner (Appeals), Ghaziabad].

M/s.E.C.E. Industries Ltd ...Appellant

Vs.

CCE, Ghaziabad ... Respondent

Present for the Appellant :Shri.S.D. Gaur, Consultant
Present for the Respondent:Shri.S.K. Bhaskar, D.R.

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

Final **ORDER NO.** 436/2011 SM (BR) **DATED:**________

PER: D.N.PANDA

Only because the photocopies of the bill of entry was produced, the appellant was denied cenvat credit of the impugned goods resulting in demand of Rs.19,554/- with consequential penalty and interest. The goods were carried through courier as per bill of entry (copy available at page 32 of appeal folder). The appellant's grievance is that when goods are imported through courier by several parties, only photocopies of bill of entries are given by such courier. Without causing enquiry with the courier, Revenue has merely disallowed Cenvat Credit. Ld. Consultant says that this has caused undue hardship to the Appellant and injustice was done to the appellant. So also the proceeding is time barred.

2. Ld. DR on the other hand supports the order of the first appellate authority.

3. Heard both sides and perused the record.

4. It appears that appellant has undergone suffering because the courier did not give original bill of entry.

5. Revenue has no material to show about any enquiry conducted with the courier to establish that DHL Courier which had imported goods of the appellant had not really imported the goods. In absence of enquiry, appellant has been put to hardship. The Tribunal had occasion to decide similar case and has set aside the duty demand as well as interest, subject to production of evidence showing that the imported goods have been utilized by the appellant and the goods are eligible to cenvat credit.

6. Following the decision of Tribunal in the case of Macneill Engg. Ltd. vs. Commissioner of Central Excise, Kolkata-VII

reported in 2009 (234) E.L.T. 345 (Tri.- Kolkata) Appellant is directed to produce evidence before Adjudicating Authority showing utilisation of goods and eligibility of goods to cenvat credit. If he is able to prove such aspect, there shall not be duty demand or interest. While passing order, the Original authority shall pay fresh look on penalty, if any, imposable. Consequently, appeal is remanded to the Original authority.

[Dictated & Pronounced in the open Court].

(D.N.PANDA)
JUDICIAL MEMBER

Anita