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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Appeal No. E/2558/2005 - EX[DB]   Date **10/08/2011**

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

To :
M/S SHIVANI LOCKS P LTD
14/6, MATHURA ROAD, FARIDABAD

M/S SHIVANI LOCKS P LTD — Appellant

Vs

C.C.E FARIDABAD — Respondent

I am directed to transmit herewith a certified copy of **Final order No.**710/ **2011 EX[DB]** dated 28-7-11 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
C.C.E FARIDABAD
DELHI-IV, NEW CGO COMPLEX,
N.H.-IV, FARIDABAD

2. Adv. / Consult
MR.YOGESH KUMAR SAXENA
CHAMBER NO. 804, PATIYALA HOUSE COURT, NEW DELHI-110001

3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications. Customs. Excise. I.P. Estate. New Delhi
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 - 110005
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
14. HON'BLE PRESIDENT.

Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. I

Excise Appeal No. 2558 of 2005

[Arising out of the Order-in-Appeal No. 48/CE/Appl./DLH-IV/2005 dated 29/04/2005 passed by The Commissioner of Central Excise (Appeals), Delhi – IV, Faridabad.]

For Approval and signature :
Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri Rakesh Kumar, Member (Technical)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	:
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:
3.	Whether their Lordships wish to see the fair copy of the order?	:
4.	Whether order is to be circulated to the Department Authorities?	:

M/s Shivani Locks P. Ltd. — Appellant

Versus

CCE, Delhi – IV, Faridabad — Respondent

Appearance

None (request for – on merits) – for the appellant.

Shri I. Beg, Authorized Representative (DR) - for the Respondent.

CORAM : **Hon'ble Shri Justice R.M.S. Khandeparkar, President**
Hon'ble Shri Rakesh Kumar, Member (Technical)

DATE OF HEARING : 28/07/2011.
DATE OF DECISION : 28/07/2011.

Final Order No. 710/2011-EX Dated : 28/07/11

Per. Rakesh Kumar :-

The appellant in their factory at 14/6, Mathura Road, Faridabad manufacture motor vehicle parts chargeable to Central Excise duty. They had another unit at Plot No. 58-60, Sector 27-A, Faridabad which manufactures latch locking system and door striker chargeable to duty under sub-heading 8301.00 and 8708.00 of the tariff. During March 2003, the Mathura Road unit of the appellant took Cenvat credit of Rs. 21,763/- on the basis of invoice No. 11600 dated 11/3/2003 issued by their Faridabad unit at Plot No. 58-60, Sector 27-A, Faridabad. The department was of the view that the Mathura Road unit was not eligible for the Cenvat credit of Rs. 21,763/- on the basis of the Faridabad unit's invoice No. 11600 dated 11/3/2003 under which duty of Rs. 21,763/- had been paid as this was a supplementary invoice and the duty paid was the short paid duty due to wilful misstatement or suppression of facts and, hence, the provisions of Rule 7 (1) (b) of Cenvat Credit Rules, 2002 would become applicable. The Assistant Commissioner vide order-in-original dated 30 July 2004 upheld the Cenvat credit demand of Rs. 21,763/- alongwith interest and imposed penalty of equal amount on them under Rule 13 (1) of Cenvat Credit Rules, 2002. On appeal to Commissioner (Appeals), the above-mentioned order of Assistant Commissioner was upheld vide order-in-appeal dated 29th April 2005. Against this order of the Commissioner (Appeals), the present appeal has been filed.

2. Heard both the sides.

2.1 None appeared for the appellant. However, the appellant vide letter dated 19th July 2011 pleaded for decision of this matter on the basis of their written submissions and with this letter, they enclosing an order No. 1275/2009-EX dated 12/11/09 passed by this Tribunal in their own case, pleaded that this order of the Tribunal is in respect of their unit at 58/60, Sector 27-A, Faridabad and in this order it has been held that short payment of duty in respect of stock transferred goods to Mathura Road unit was not due to wilful suppression of facts, misstatement, fraud or collusion etc. and, hence, neither longer limitation period for demand of duty would be applicable nor penalty under Section 11AC would be attracted. They in this letter, therefore, pleaded that when no wilful misstatement, suppression of fact etc. is involved, the provisions of Rule 7 (1) (b) are not attracted.

2.2 Heard Shri I. Beg, the learned Departmental Representative, who defended the impugned order by reiterating the findings of the Commissioner (Appeals).

3. We have carefully considered the submissions made by the appellant in their letter dated 19/7/2011 and have also considered the submissions made by the learned Departmental Representative.

4. The present Cenvat credit demand is against Mathura Road unit of the appellant who was receiving some parts of motor vehicle from their Sector 27-A, Faridabad unit on stock transfer

basis. The earlier in respect of their Faridabad unit, there was a dispute about the assessable value of the goods transferred by that unit to Mathura Road unit on stock transfer basis and in respect of such dispute, this Tribunal vide final order No. 1275/09-EX dated 12/11/09 while confirming the short payment of duty, had held that longer limitation period would not be available to the department as no fraud, suppression, wilful misstatement of facts or contravention of the provisions of any Central Excise Rules with intent to evade the payment of duty is involved and on this basis, the Tribunal had held that the duty demand against the Faridabad unit can be made only for the normal limitation period. When no fraud, suppression, wilful misstatement etc. was involved in the short payment of duty by the Faridabad unit, which had subsequently being paid by them under the supplementary invoice, its Cenvat credit would be available to Mathura Road unit and as such Rule 7 (1) (b) would not be applicable. In view of this, the impugned order is not correct, the same is set aside. The appeal is allowed.

(Operative part of the order pronounced in the open court.)

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Member (Technical)

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