FAX : 0532-2400149 REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 15/09/2017

To

Appellant as per address in table below
Respondent as per address in table below

Final Order No. A/71056/2017-SM[BR] dated 13/09/2017

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the **Central Excise and Salt Act, 1944.**

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	E/70727/2016	**Rathi Steel And Power Ltd** A-3 & C-4,south Side Of Gt Road GHAZIABAD UP
		Name and Address of Respondent
2		C.C.E. & S.T.-Ghaziabad 202...WING A C.G.O. COMPLEX-II,KAMLA NEHRU NAGAR, GHAZIABAD, UTTAR PRADESH-201002

Copy To
3Advocate(s) / Consultant(s):

Rajesh chibber
FA-9, KAVI NAGAR,
GHAZIABAD,
UP

4 Bar Association, CESTAT, Allahabad

5 Director Publications, Customs, Excise, I.P. Estate, Delhi

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

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 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

10 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

11 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad -- 38

12 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

13 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
Old Red Building, 38 M.G. Marg, Civil Lines, Allahabad – 211 001

COURT NO. II

DATE OF HEARING : 13/09/2017.
DATE OF DECISION : 13/09/2017.

Excise Appeal No. 70727 of 2016 (SM)

[Arising out of the Order-in-Appeal No. GZB/EXCUS/000/APP/0269/15-16 dated 14/01/2016 passed by The Commissioner (Appeals), Meerut – II, Central Excise & Customs, Noida.]

M/s Rathi Steel and Power Ltd. Appellant

Versus

CCE & ST, Ghaziabad Respondent

Appearance

Shri Rajesh Chhibber, Advocate – for the Appellant.

Shri Mohd. Altaf, Authorized Representative (DR) – for the Respondent.

CORAM: **Hon'ble Shri Ashok Jindal, Member (Judicial)**

Final Order No.71056/2017 Dated : 13/09/2017

Per. Ashok Jindal :-

The appellant is in appeal against the impugned order wherein the refund claim has been rejected by the authorities below.

2. The brief facts of the case are that during the course of audit in August 2013 for the year 2012-2013, it was pointed out that on certain input/input services the appellant is not entitled to

avail Cenvat credit. On pointing out by the audit, the appellant reversed the Cenvat credit but on realizing that they are not required to reverse the Cenvat credit, they filed the refund claim before the authorities below. The refund claim was rejected holding that they are not entitled to avail Cenvat credit. Aggrieved from the said order, the appellant is before me.

3. The learned Counsel for the appellant submits that neither show cause notice for wrong availment of Cenvat credit was issued nor any notice was issued for rejection of refund claim. In that circumstances, without issuance of show cause notice, the impugned order is to be set aside.

4. On merits, he submits that the Cenvat credit was sought to be denied on the following grounds :-

(a) the name of the supplier/manufacturer was mentioned wrongly by the registered dealer against whose invoices they availed Cenvat credit ;

(b) capital goods lost in fire and they have claimed insurance claim, and insurance company has paid the amount, the Cenvat credit is required to be reversed ; and

(c) the invoices were issued in the name of the head office and the appellant has taken Cenvat credit whereas there are two units of the appellant and, therefore, they are not entitled to Cenvat credit for the invoices issued in the name of head office.

5. It is his contention of the learned Counsel that supplier has issued a certificate certifying the incorrect name of

manufacturer/supplier was mentioned inadvertently by the registered dealer. The insurance company has not had reimbursed the amount to Central excise duty paid on the capital goods lost in fire. Thirdly, he submits the second unit was closed long back and the entire cenvat credit pertains to the factory in question only. Therefore, he prayed that impugned order is to be set aside.

6. On the other hand, learned AR reiterated the findings of the impugned order.

7. Heard the parties and considered the submissions.

8. It is an admitted fact that in this case during the course of audit certain, Cenvat credit was sought to be denied to the appellant on the following grounds :-

(a) the name of manufacturer/supplier is not correct ;

(b) the insurance company has reimbursed the insurance claim and

(c) in respect of invoices issued in the name of head office, full credit has been taken by the appellant at Ghaziabad unit.

9. The appellant reversed the Cenvat credit but no show cause notice was issued for reversal of Cenvat credit and on relising that appellant has correctly taken the Cenvat credit, the appellant filed refund claim in time. To reject the refund claim filed by the appellant, no show cause notice was issued. For adjudication of a

refund claim, if some refund claim is not maintainable, the Adjudicating Authority is required to issue show cause notice giving reasons for rejection of the refund claim. In this case, the said exercise has not been done. Therefore, the refund claim cannot be rejected on these grounds itself.

10. On merits, I find that the registered dealer has certified the name of manufacturer/supplier who has supplied the goods to the registered dealer and to that effect a certificate has been issued. In that circumstances mere name of the supplier/ manufacturer mentioned wrongly by the registered dealer against which invoices were issued, Cenvat credit cannot be denied, where the appellant has received the goods and paid duty thereon. Therefore, I hold that on that ground appellant is entitled to avail Cenvat credit.

11. With regard to the insurance claim, it is a fact on record that insurance company reimbursed the value of the capital goods lost in fire. The insurance company never reimbursed the duty or tax payable on those goods. It is a fact on record that no duty part has been reimbursed by the insurance company. In that circumstances, the Cenvat credit on the goods lost in fire is not required to be reversed by the appellant. Therefore, for the wrong reversal for the Cenvat credit, the appellant is entitled for refund claim.

12. With regard to the Cenvat credit on the invoices in the name of head office, it is a fact on record that although appellant

are having two factories but the another factory has been closed long back and, therefore, the only one factory was entitled to claim credit which is the appellant's factory. In that circumstances, the appellant is entitled to avail Cenvat credit as the invoices meant for their factory only. Therefore, for said wrong reversal of Cenvat credit by appellant, the appellant is entitled for refund of the same.

13. In that circumstances, I hold that refund claim is to be sanctioned by the authorities below. Therefore, by setting aside the impugned order, I allow the refund claim filed by the appellant.

14. In these terms, appeal is allowed.

(Dictated and pronounced in open court.)

Sd/-

(Ashok Jindal)

Member(Judicial)

PK

प्रमाणित प्रति/Certified True Copy
28/09/17
सहायक पंजीकार/Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
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38, M. G. MARG, ALLAHABAD-211001