CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
CHENNAI

S.No.	Cause List S.No.	Appeal	Appellant	Respondent	Arising out of	Impugned order passed by
1.	19	E/204/2008	CRI Pumps Pvt. Ltd.	CCE & ST Coimbatore	OIA No.15/2008-CE dt. 25.1.2008	CCE & ST (Appeals) Coimbatore
2.	20	E/205/2008	-do-	-do-	OIA No.18/2008-CE dt. 25.1.2008	-do-
3.	21	E/213/2008	-do-	-do-	OIA No.17/2008-CE dt. 25.1.2008	-do-
4.	22	E/214/2008	-do-	-do-	OIA No.27/2008-CE dt. 25.1.2008	-do-
5.	23	E/215/2008	-do-	-do-	OIA No.03/2008-CE dt. 16.1.2008	-do-
6.	24	E/216/2008	-do-	-do-	OIA No.16/2008-CE dt. 25.1.2008	-do-
7.	25	E/218/2008	-do-	-do-	OIA No.12/2008-CE dt. 23.1.2008	-do-
8.	26	E/219/2008	-do-	-do-	OIA No.29/2008-CE dt. 31.1.2008	-do-
9.	27	E/220/2008	-do-	-do-	OIA No.30/2008-CE dt. 31.1.2008	-do-
10.	28	E/221/2008	-do-	-do-	OIA No.32/2008-CE dt. 31.1.2008	-do-
11.	29	E/222/2008	-do-	-do-	OIA No.31/2008-CE dt. 31.1.2008	-do-
12.	30	E/229/2008	-do-	-do-	OIA No.28/2008-CE dt. 25.1.2008	-do-

13.	31	E/230/2008	-do-	-do-	OIA No.13/2008-CE dt. 23.1.2008	-do-
14.	32	E/237/2008	-do-	-do-	OIA No.57/2008-CE dt. 10.4.2008	-do-
15.	33	E/333/2008	-do-	-do-	OIA No.58/2008-CE dt. 10.4.2008	-do-
16.	34	E/341/2008	-do-	-do-	OIA No.62/2008-CE dt. 15.4.2008	-do-
17.	35	E/359/2008	-do-	-do-	OIA No.64/2008-CE dt. 24.4.2008	-do-

Shri R. Parthasarathy, Advocate
For the Appellant

Shri S. Govindarajan, AC (AR)
For the Respondent

CORAM :

Hon'ble Shri D.N. Panda, Judicial Member
Hon'ble Shri Madhu Mohan Damodhar, Technical Member

Date of hearing / decision : 10.02.2017

FINAL ORDER No. 40203-40219 /2017

Per D.N. Panda

S.No.	Cause List S.No.	Appeal	Arising out of	Amount (in Rs.)
1.	22	E/214/2008	OIA No.27/2008-CE dt. 25.1.2008	Amount-1,10,760 Penalty-1,10,760
2.	25	E/218/2008	OIA No.12/2008-CE dt. 23.1.2008	Amount-58,069 Penalty-58,069
3.	26	E/219/2008	OIA No.29/2008-CE dt. 31.1.2008	Amount-1,06,506 Penalty-1,06,506

4.	27	E/220/2008	OIA No.30/2008-CE dt. 31.1.2008	Amount-1,05,453 Penalty-1,05,453
5.	28	E/221/2008	OIA No.32/2008-CE dt. 31.1.2008	Amount-85,713 Penalty-85,713
6.	29	E/222/2008	OIA No.31/2008-CE dt. 31.1.2008	Amount-1,42,016 Penalty-1,42,016
7.	30	E/229/2008	OIA No.28/2008-CE dt. 25.1.2008	Amount-90,621 Penalty-90,621
8.	31	E/230/2008	OIA No.13/2008-CE dt. 23.1.2008	Amount-48,559 Penalty-48,559
9.	32	E/237/2008	OIA No.57/2008-CE dt. 10.4.2008	Amount-1,19,940 Penalty-1,19,940
10.	33	E/333/2008	OIA No.58/2008-CE dt. 10.4.2008	Amount-1,91,996 Penalty-1,91,996

Appellant says that a common issue involved in the above batch of appeals is as to whether handling charges and postage shall form part of the assessable value. Similar issue was before the Bench in Appeal No.E/1090 & 1102/2005 which was disposed of by Final Order No.41665-41666/2016 dt. 28.9.2016 holding in favour of assessee. The Bench was of the view that post-clearance expenses shall not form part of the assessable value. The expenses of above nature being supplementary and not mandatory for clearances, that shall not form part of the assessable value. Considering such legal position, penalties imposed were waived. In the present batch of appeals tabulated above, similar penalty being in question, following judicial discipline, the Bench may pass the similar order as that was passed in above final order.

2. Revenue does not bring out any difference to the proposition of appellant stated above.

3. Heard both sides and perused the record.

4. Submission of ld. counsel being within the four of previous order cited above, we pass same order waiving penalties imposed. Consequently, the aforesaid 10 appeals are allowed only to this extent.

S.No.	Cause List S.No.	Appeal	Arising out of	Rule 6 Amount (Rs.)
1.	19	E/204/2008	OIA No.15/2008-CE dt. 25.1.2008	Amount Rs.13,04,576 Penalty-5,00,000
2.	20	E/205/2008	OIA No.18/2008-CE dt. 25.1.2008	Amount Rs.3,66,946 Penalty-15,000
3.	21	E/213/2008	OIA No.17/2008-CE dt. 25.1.2008	Amount Rs.3,24,661 Penalty-15,000
4.	23	E/215/2008	OIA No.03/2008-CE dt. 16.1.2008	Amount Rs.29,59,127 Penalty-1,00,000
5.	24	E/216/2008	OIA No.16/2008-CE dt. 25.1.2008	Amount Rs.7,52,136 Penalty-3,00,000
6.	34	E/341/2008	OIA No.62/2008-CE dt. 15.4.2008	Amount Rs.2,63,594 Penalty-15,000
7.	35	E/359/2008	OIA No.64/2008-CE dt. 24.4.2008	Amount Rs.3,44,706 Penalty-30,000

5. The only dispute in the batch of appeals tabulated as above, is whether appellant not manufacturing the exempted goods, the scrap and waste generated in the course of such manufacture shall render the appellant liable to a percentage levy under Rule 6 (2) of the Cenvat Credit Rules, 2004.

6. Law is very clear that above said rule has application where an assessee manufactures both dutiable final product as well as exempted final product. But in the present batch of appeals, appellant has not at all manufactured any exempted final product.

What that was the outcome in the course of manufacture of dutiable final product was scrap. Therefore, applying the first principle of law, scrap generated not being exempted goods manufactured, that is totally ruled out from scope of application of Rule 6 (2) of Cenvat Credit Rules, 2004. When the appellant succeeds on the first principle of law, there is no need to make any further enquiry. Consequently, all the seven appeals tabulated as above are allowed.

(Dictated and pronounced in open court)

14/02/17

(Madhu Mohan Damodhar)
Technical Member

13/2/2017

(D.N. Panda)
Judicial Member

gs

Customs, Excise & Service Tax Appellate Tribunal

प्रमाणित प्रति/Certified True Copy

सहायक पंजीकार/Asst. Registrar
सीमाशुल्क उत्पादशुल्क एवं सेवा कर
अपील अधिकरण/(CESTAT)
चेन्नै/Chennai