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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/686 -87/2006 Date 14/02/2008

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

To :
SIDDHARTHA TUBES LTD.
N-4,III-FLOOR, OLD IDA BUILDING 15-16 JAWAHAR MARG, INDORE

SIDDHARTHA TUBES LTD. Appellant
Vs
C.C.E. INDORE Respondent

I am directed to transmit herewith a certified copy of Final order No. 57-58/2008 Excise dated 13-2-08 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. INDORE
   MANIK BAGH PALACE, POST BOX NO. 10, INDORE 452001 (M.P.)
2. Adv. / Consult
   MR.BIPIN GARG, ADV.,
   B-1/1289,A-VASANT KUNJ, NEW DELHI
3. E.D.R.
4. ~~C.E.D.R.~~
5. Bar association, CESTAT. New Delhi
6. M/s. Deeparchi Publications, M-93, marg. 43, saket, New
7. M/s Centax Publictions (P) Ltd., 1512-E, Bhishm Pitamah
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301
9. R. Venkatraman Constt. 44-B, S.Suncity, Ghaziabad -
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh,
12. Co, Law Institution
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Assistant Registrar
(Excise Appeal Branch)

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

Excise Appeal Nos. 686 - 687 of 2006

Date of Hearing:31.1.2008
Date of Decision: .2008

For approval and signature:

Hon'ble Mr. Justice S.N. Jha, President
Hon'ble Mr. A.K. Srivastava, 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.	:	yes
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:	yes
3. Whether Their Lordships wish to see the fair copy of the Order?	:	yes
4. Whether Order is to be circulated to the Departmental authorities?	:	No

M/s Siddharth Tubes Limited ...Appellant
[Rep. by Mr. Bipin Garg, Advocate]

Vs.

CCE, Indore ...Respondent
[Rep. by Mr. S.M. Tata, DR]

Coram: Hon'ble Mr. Justice S.N. Jha, President
Hon'ble Mr. A.K. Srivastava, Member [Technical]

Final ORDER No. 57-58/08-EX

Per: A.K. Srivastava:

Excise Appeal No.686 of 2006 has been filed by M/s Siddhartha Tubes Limited, (CRM Division), **Shajapur** against the order-in-original No.95/Commr/CEX/IND/05 dated 28.11.2005 passed by the Commissioner, Central Excise, Indore.

2. The Commissioner, vide impugned order, confirmed the duty amounting to Rs.13,75,331/- involved on the goods found short and appropriated the same against the debits made by the appellants in RG-23A Part II. He confirmed the duty amounting to Rs. 59,35,797/- under proviso to Section 11A(1) of the Central Excise Act, 1944. The amount of Rs. 51,65,671/- already paid by the appellants was appropriated against the demand and the appellants were ordered to pay balance amount of Rs. 7,70,126/-. He also confirmed Central Excise duty amounting to Rs. 5,16,548/- under proviso to Section 11A(1) of the Central Excise Act, 1944 on the goods cleared after slitting. He also imposed mandatory penalty of Rs. 12,86,674/- on the appellants under Section 11AC of Central Excise Act, 1944 read with Rule 25 of the Central Excise Rules, 2002. He also ordered the appellants to pay the interest at appropriate rate on the amount confirmed for recovery in terms of provisions of Section 11AB of the Central Excise Act, 1944.

3.1. Excise Appeal No.687 of 2006 has been filed by M/s Siddhartha Tubes Limited, **Sarangpur**, against the order-in-original No. 96/Commr/CEX/IND/05 dated 28.11.2005 passed by the Commissioner, Central Excise, Indore.

3.2. The Commissioner, vide impugned order, has disallowed the cenvat credit taken and availed amounting to Rs. 71,09,312/- and ordered its recovery under Section 11A of the Central Excise Act, 1944 read with Rule 12 of the Cenvat Credit Rules, 2001 (now Cenvat Credit Rules, 2002) alongwith interest. He also directed the appellants to pay interest in terms of Section 11AB of the Central Excise Act, 1944. He, however, held that the penalty is not imposable on the appellants under rule 13 of the Cenvat Credit Rules, 2001 (now Cenvat Credit Rules, 2002).

4. Heard both sides and perused the records.

5. Since the issue involved in both the appeals is inter-linked, the two appeals are being taken up for disposal by the Common order.

6. M/s Siddarth Tubes Ltd., (CRM Division), **Shajapur** (hereinafter referred to as Unit No.I) are the manufacturer of C.R. Coils/ Sheets, G.P. Coils/ Sheets and

G.C. Sheets and Galvanised Steel Sheets falling under chapter heading 72 of Central Excise Tariff Act, 1985. The Unit No. I is also availing the Cenvat credit benefit on the inputs as well as the capital goods received in their factory. The main inputs are H.R. Coils and zinc.

7. There is another unit in the name of M/s Siddhartha Tubes Limited situated at **Sarangpur** (hereinafter referred to as Unit No. II) manufacturing M.S. pipes and galvanized pipes falling under chapter sub-heading No. 7306.90, the main inputs of which are also H.R. Coils and zinc. As and when required, the Unit No. I has cleared its inputs as such to Unit No. II after debiting the credit taken on such inputs.

8. The officers of Central Excise Commissionerate, Indore visited Unit No. I on 7.9.2001 and 8.9.2001. A letter dated 14.9.2001 was written by the Superintendent (Prev.) Central Excise, Indore to Unit No. I stating that the raw material has been cleared by it by debiting the equal amount of credit taken on the same consignment. While going through the invoices, it was noticed that the Unit No. I has collected extra amount. The said Superintendent pointed out that the assessable value should be determined as per the new valuation rules, which should be equal to 115% of the landed cost of the goods cleared. The landed cost of the goods includes the freight also. He advised Unit No. I to debit the differential duty on all the clearances since 1.7.2000. The Unit No. I issued supplementary invoices by debiting the differential duty, the details of which are as under:-

Sl. No.	Supplementary invoice No. & date	Duty Rs.	For clearance during
(i)	1012 dt. 17.9.01	12,20,319/-	1.3.01 to 31.3.01
(ii)	1013 dt. 17.9.01	30,52,488/-	1.4.01 to 22.8.01
(iii)	1072 dt 26.9.01	8,92,864/-	24.9.2000 to 26.2.2001
Total Rs. 51,65,671/-			

9. The Deputy Commissioner, Central Excise issued show cause notice dt. 1.10.2002 to Unit No. II alleging that on scrutiny of ER-1 for the months of September, 2001 and December, 2001, it is noticed that Unit No. II had taken Cenvat Credit of Rs. 71,09,312/- in terms of Rule 7(1) (b) of Cenvat Credit Rules, 2001 on the strength of the supplementary invoices issued by Unit No. I for the differential duty paid on account of under-valuation of goods, as pointed out by the Department. Differential duty of Rs. 51,65,671/- was paid in September, 2001 vide three supplementary invoices referred to above and differential duty of Rs. 19,43,641/- was paid in December, 2001 vide supplementary invoice No. 1550 dated 23.12.2001. It is alleged that the under-valuation was done by Unit No. I, which resulted in short payment of the Central excise duty by reason of wilful mis-statement and suppression of facts.

10. It was further alleged that as per clause (b) of sub rule (1) of rule 7 of Cenvat Credit Rules, 2001, the Cenvat Credit can be taken on the basis of the supplementary invoice except where additional amount of duty became recoverable from the manufacturer of inputs on account of any non-levy or short-levy by reason of fraud, collusion or any wilful mis-statement or suppression of facts or contravention of any provision of the Act with intent to evade payment of duty. It was averred in the show cause notice that it appears that Unit No. I evaded the duty and subsequently paid it on account of under-valuation by reason of wilful mis-statement and suppression of facts. Therefore, the supplementary invoices issued by Unit No. I appear to be improper documents for the purpose of taking credit. Hence the credit of Rs.71,09,312/- is disallowable and recoverable under rule 12 of Cenvat Credit Rules alongwith interest from Unit No. II and Unit No. II is also liable to penal action under Rule 13 ibid.

11. The Unit No. II submitted their defence reply dt. 21.3.203 and its authorized representative also appeared for personal hearing on 23.9.2004 and pleaded their case. They also submitted that no proceedings has been initiated

against Unit No. I as mentioned in the show cause notice issued to them i.e. Unit No. II. Both the units fall under the same Commissionerate.

After giving personal hearing in the case of Unit No. II, it appears that the Department realized and issued the show cause notice in dispute on 25.8.2005 to Unit No. I, for appropriation of differential duty already debited amounting to Rs.51,65,671/- on account of under-valuation, besides the recovery of interest and the imposition of penalty. As per the show cause notice, the officers of Central Excise (Prev.) Branch, Indore visited the factory of the appellant on 8.9.2001. During verification of stock, certain shortage in the stock was found. The Unit No. I has debited the duty amount of Rs.13,75,331/- involved on such shortage. **The Unit No. I is not in appeal on this count.** The Commissioner did not impose any penalty on Unit No. I on account of the shortage detected as entire duty of Rs.13,75,331/- was paid by it before the issue of the show cause notice.

12. It was further alleged in the show cause notice dated 25.8.2005 that on further investigations, it was noticed that Unit No. I is clearing inputs as such to their sister concern i.e., Unit No. II since September, 2000 by debiting the equal amount of duty.

The invoices issued show realization of additional consideration on which no Central Excise duty was paid. During the period 1.3.2001 to 22.8.2001, the Unit No. I charged extra amount under the head. "Other Addition". However, on pointing out, the Unit No. I debited the excise duty amounting to Rs. 51,65,671/- on the charges under the head "Other addition and on Freight". It was further noticed that freight was calculated @ Rs. 250/- PMT for the receipt of HR Coils at Shajapur Unit (i.e. Unit No.I) whereas the freight paid was @ Rs. 275/- per MT upto Shajapur Unit (i.e. Unit No. I) and not Rs. 250/- PMT. The duty short paid on the differential freight work out to Rs. 7,70,126/-. It was also noticed that the Unit No. I had cleared 129.590 MT H.R./C.R. Coil, 273.220 MT H. R. Slits, 309.77 MT H.R. Sheets after slitting but paid the duty equal to the amount of credit taken, without including the cost of slitting. The cost of slitting was

informed to be on an average Rs. 72/- PMT. Accordingly, the differential duty of Rs. 5,16,548/- was calculated on this count and demanded from Unit No. I.

13. It was alleged that the appellants had knowingly not complied with the procedure laid down under Central Excise Rules, 1944 and further rule 4, rule 8 of Central Excise Rules 2001 read with section 4 of Central Excise Act and wilfully suppressed the facts of under-valuation.

After following the necessary adjudication proceedings the Commissioner has passed the order-in-original No. 95/Commr./CEx/IND/05 dated 28.11.2005 as referred to above against which the Unit No. I has filed Excise appeal No. 686 of 2006. Similarly, he has passed order-in-original No. 96/Commr./CEx/IND/05 dated 28.11.2005 against which the Unit No. II has filed the Excise Appeal No. 687 of 2006.

14. We have examined the position. Prior to 1.4.2000, as per rule 57F(3) of the Central Excise Rules, 1944, the inputs were allowed to be removed for home consumption on payment of duty equal to the amount of credit availed on such inputs. Rule 57F(3) reads as under.

> 57F(3) All removals of inputs for home consumption shall be made-
>
> (a) On payment of duty equal to the amount of credit availed in respect of such inputs; and
>
> (b) Under the cover of invoice prescribed under rule 52A.

15. Since 1.4.2000, the structure of the modvat credit Rules was changed and as per explanation given in para 1 of rule 57AB of Central Excise Rules, 1944, when the inputs are removed from the factory, the manufacturer of the final product shall pay the appropriate duty of excise leviable thereon as if such inputs have been manufactured in the said factory. The explanation read as under:-

> The Cenvat credit may be utilized for payment of any duty of excise on any final products manufactured by the manufacturer or for payment of duty on inputs or capital goods themselves if such inputs are removed as such or after being partially processed, or such capital goods are removed as such.
>
> Explanation: When inputs or capital goods are removed from the factory, the manufacturer of the final products shall pay the

> appropriate duty of excise leviable thereon as if such inputs or capital goods have been manufactured in the said factory, and such removal shall be made under the cover of an invoice prescribed under rule 52A.

16. Rule 57AB was amended vide Notification No. 6/2001-CE (NT) dt. 1.3.2001. As per para (1C), if the inputs on which credit has been taken are removed as such, the manufacturer of final product shall pay an amount equal to the duty of excise which is leviable on such goods at the rate applicable to such goods on the date of such removal on the value determined under Section 4 of Central Excise Act, 1944 Para (1C) read as under:-

> (1C) When inputs or capital goods, on which credit has been taken, are removed as such from the factory, the manufacturer of the final products shall pay an amount equal to the duty of excise which is leviable on such goods at the rate applicable to such goods on the date of such removal and on the value determined for such goods under section 4 of the said Central Excise Act, and such removal shall be made under the cover of an invoice referred to in rule 52A.

17. Since 1.7.2001, the Central Excise Rules 1944 were abolished and Cenvat Credit Rules, 2001 were introduced. As per Rule 3(4), on the clearance of inputs as such, the manufacturer was liable to pay an amount equal to the duty of Excise which is leviable on such goods at the rate applicable on the date of removal and on the value determined under section 4 or Section 4A of Central Excise Act, 1944 Para 4 of rule 3 reads as under:-

> Para 4 When inputs or capital goods, on which CENVAT credit has been taken, are removed as such from the factory, the manufacturer of the final products shall pay an amount equal to the duty of excise which is leviable on such goods at the rate applicable to such goods on the date of such removal and on the value determined for such goods under Section 4 or Section 4 A of the Act, as the case may be, and such removal shall be made under the cover of an invoice referred to in rule 7.

Para 4 of rule 3 of Cenvat Credit Rules 2002 was substituted w.e.f. 1.3.203 vide Notification No.13/2003-CE (NT), which reads as under:-

> When inputs or capital goods, on which CENVAT Credit has been taken, are removed as such from the factory, the manufacturer of the final products shall pay an amount equal to the credit availed in respect of such input or capital goods and such removal shall be made under the cover of an invoice referred to in rule 7.

From the above, it is clear that prior to 1.4.2000, the manufacturer was liable to pay duty equal to the credit taken on the inputs and the same was again substituted since 1.3.2003.

18. That the CBEC issued circular no.643/34/202 Cx dated 1.7.2002 after substitution of para (1C) in rule 57 AB. Point No.14 of the Circular reads as under:-

Point of Doubt

How will valuation be done when inputs or capital goods on which Cenvat Credit has been taken, are removed as such from the factory, under the erstwhile sub-rule (1C) of Rule 57AB of the Central Excise Rules, 1944, or under Rule 3(4) of the Cenvat Credit Rules, 2001 or 2002?

Clarification

Where inputs or capital goods, on which credit has been taken, are removed as such on sale, there should be no problem in ascertaining the transaction value by application of Section 4(1)(a) or the Valuation Rules. [Provided tariff values have not been fixed for the inputs or they are not assessed under Section 4A on the basis of MRP].

There may be case where the inputs or capital goods are removed as such to a sister unit of the assessee or to another factory of the same company and where no sale is involved. It may be noticed that sub-rule (1C) of Rule 57AB of the erstwhile Central Excise Rules, 1944 and Rule 3 (4) of the Cenvat Credit Rules, 2001 (now 2002), talk of determination of value for "such goods" and not "said goods". Thus, if the assessee partly sells the inputs to independent buyers and partly transfers to its sister units, the transaction value of "such goods" would be available in the form of the transaction value of inputs sold to an unrelated buyer (if the sale price to the unrelated buyer varies over a period of time, the value nearest to the time of removal should be adopted).

Problems will, however, arise where the assessee does not sell the inputs/ capital goods to any independent buyer and the only removal of such input/ capital goods, outside the factory, is in the nature of transfer to a sister unit. In such a case proviso to Rule 9 will apply and provisions of Rule 8 of the valuation rules would have to be invoked. However, this would require determination of the 'cost of production or manufacture', which would not be possible since the said inputs/ capital goods have been received by the assessee from outside and have not been produced or manufactured in his factory. Recourse will, therefore, have to be taken to the residuary Rule 11 of the valuation rules and the value determined using reasonable means consistent with the principles and general provisions of the valuation rules and sub-section (1) of Section 4 of the Act. **In that case, it would be reasonable to adopt the value shown in the invoice on the basis of which cenvat credit was taken by the assessee in the first place**. In respect of capital goods adequate depreciation may be given ~~as~~ as per the rates fixed in letter F. No. 495/16/93-Cus.-IV dated 26.5.1993, issued on the Customs side.

19. We find that no evidence has been brought on record to show that the unit No. I has ~~party~~ partly sold the inputs i.e. H.R. Coils to the independent buyers at higher price. Therefore, the action of Unit No. I to reverse the credit taken on the inputs cleared as such to the Unit No. II in terms of the high lighted portion of the Boards' Circular dated 1.7.2002 cannot be faulted.

20. The CBEC again issued Circular No. 813/10/2005 dt. 25.4.2005. Para No. 2 and the table thereto reads as under:-

"2. A number of references seeking further clarification on some of the points clarified in the circular mentioned in para 1 above (i.e. Circular dated 1.7.2002) have been received in the Board. These points are being clarified in the table closed. These clarifications supersede the clarification given in above referred circular".

Point of Doubt

How will valuation be done when inputs or capital goods, on which cenvat credit has been taken, are removed as such from the factory, under the erstwhile sub-rule (1C) of Rule 57AB of the Central Excise Rules, 1944 or under rule 3(4) of the Cenvat credit Rules, 2001 or 2002?

Clarification:

In such situations, the provisions of Rule 3(5) of Cenvat Credit Rules, 2004 would apply.

From the reading of the above Circulars, it is clear that the Unit No. I was liable to reverse only the amount equal to the credit taken on the inputs. This has also been so held by the larger bench of the Tribunal in the case of Eicher Tractors vs. CCE, Jaipur -2005 (189) ELT 131 (Tri.-LB) That the Board, which were administering the Central Excise Laws, were themselves not sure about the correct position, will be evident from the fact that they issued further clarification under the circular dated 16.6.2005 on the subject matter giving reference to the earlier circulars dated 1.7.2002 and 25.4.2005.

21. Clearly, there was bonafide doubt as to whether the transaction value should be adopted for the payment of duty on the inputs cleared as such or the reversal of the credit taken on the inputs will suffice. It is not denying the fact that there were frequent changes in the rules coupled with the Board clarifications, which created confusion both in the Trade and the Department regarding the correct legal position in this respect.

22. In such a scenario, it will be preposterous to charge the Unit No. I that they wilfully misstated or suppressed the facts with intention to evade payment of duty. In any case, whatever duty paid on H.R. Coils at Unit No. I was available as credit to the Unit No. II, which was captively using the H.R. Coils for the manufacture of M.S. Pipes. Therefore, the exercise is revenue neutral. The five member bench of the Tribunal in the case of Jay Yuhshin Ltd., vs. CCE, New Delhi reported in 2000 (119) ELT 718 (Tribunal- LB) has held that with reference

to the modvat scheme, it has to be shown that the revenue-neutral situation comes about in relation to the credit available to the assessee himself and not by way of availability of credit to the buyer of the assessee's manufactured goods so as to establish that there is no intention to evade duty. In this case, the credit of the duty paid by the Unit No. I is available to the Unit No. II of the assessee. Hence, there is no intention to evade duty and the charge of wilful misstatement or suppression of facts etc. does not sustain.

23. The Hon'ble Supreme Court in the case of CCEx, Mumbai vs. Mahindra and Mahindra Ltd., reported in 2005 (179) ELT 21 (SC) has held that the availability of the modvat credit to an assessee by itself is not conclusive or decisive consideration though it may be one of the relevant consideration for deciding the applicability of proviso to Section 11A of the Central Excise Act, 1944. As mentioned above, there was bonafide doubt whether the transaction value should be adopted for the payment of duty on the inputs cleared as such or the reversal of the credit taken on inputs will suffice in view of the Board's circulars dated 1.7.2002 and 25.4.2005 vis-à-vis rule position prevail during the impugned period. All this will cumulatively indicate that there was no wilful misstatement or suppression of facts etc. with intention to evade payment of duty on the part of Unit No. I so as to warrant invoking the extended period of limitation. The Unit No. I, on insistence of the Department, has paid the differential duty under protest. They are legitimately entitled to take the credit of the same in Unit No. II.

24. The Tribunal in the case of P.T.C. Industries Ltd., vs. CCE, Jaipur-I reported in 2003 (159) ELT 1046 (Tri. Del.) has held that whatever duty paid in one unit is available as credit in the other unit. The issue is revenue neutral as in case one unit were to pay the differential duty, the same amount will be available as credit in the second unit for utilization for payment of duty on the goods manufactured there. The Tribunal in the case of Kores India Ltd., vs CCE, Hyderabad -2004 (178) ELT 901 (Tri. Bang.) observed that the appellants clearing

barium carbonate to their own granulation unit on payment of duty by taking average value of barium carbonate of various grades, and granulation unit was taking credit of duty paid by appellants. There was revenue neutrality, despite the fact that appellants had not determined correct value of each grade of barium carbonate. Since there was revenue neutrality, intention to evade payment of duty cannot be alleged and extended period is not invokable.

25. Another plea advanced by the appellants is that the prohibition to take credit on the supplementary invoices operates only in the case of sale and in the case of stock transfer, prohibition under Rule 7(1)(b) of the Cenvat Credit Rules is not applicable even if presuming that the additional amount of duty becomes recoverable from one unit on account of fraud, suppression of fact etc. They relied upon the decision of the Tribunal in the case of Karnataka Soaps and Detergents Ltd. vs. CCE, Mysore, Bangalore reported in 2005 (192) ELT 892 (Tri. Bangalore) in this connection. They maintained before us that they have stock transferred the goods from Unit No. I to Unit No. II. If that be so, the ratio of the case law in the case of Karnataka Soaps and Detergents Ltd., cited supra is squarely applicable to the present case and the Department's case falls flat. Be that as it may, we have already held that the charge of wilful misstatement or suppression of facts etc., with intention to evade payment of duty is not sustainable against the Unit No. I. Hence, the instant case is not hit by the exception provided in Rule 7 (1)(b) of the Cenvat Credit Rules. Therefore, the differential duty of Rs. 71,09,312/- paid by the Unit No. I on four supplementary invoices (although not payable in the light of the Boards' Circular No. 1.7.202, 25.4.2005 and the Larger Bench decision of the Tribunal in the case of Eicher Tractors Ltd., reported in 2005 (189) ELT 131 (Tri. LB) but paid at the insistence of the Department) is available as cenvat credit to Unit No. II for payment of duty on the finished goods manufactured there. For the same reasons, we hold that the duty of Rs. 7,70,126/- and Rs. 5,16,548/- is not payable on the differential freight and the trimming charges respectively by the Unit No. I. Trimming charges are

otherwise also not includible in the transaction value as trimming of the H.R. Coils does not involve any manufacturing activity. In any case, if duty is paid on the differential freight and the trimming charges, the same will be available as cenvat credit to Unit No. II and the entire exercise will be purely of academic nature and revenue neutral.

26. The reliance placed by the Revenue on the following case laws is not correct.

(i) I.F.B. Industries Ltd., vs. CCE, Goa – 2005 (179) ELT 487 (Tri. Mumbai)

(ii) U.T. Ltd., vs. CCE, Chennai – 2006 (199) ELT 658 (Tri. Chennai)

as in these cases, the plea of revenue neutrality was rejected by the Tribunal and the duty demands were confirmed as the intention to evade payment of duty and suppression of facts were proved. In the case before us, it is not so. Hence, the ratio the case laws cited by the Revenue is not applicable to the facts of the present case.

27. In the light of the above discussions and findings, we pass the following orders.

ORDER

(i) In respect of the Excise Appeal No.686 of 2006 filed by M/s Siddhartha Tubes Limited (CRM Division, Shajapur (i.e. Unit No.I), we order as under:

(a) Duty of Rs. 51,65,671/- is not payable. However, since the same has been paid on the insistence of the Department, the same is available as Cenvat Credit to Unit No. II.

(b) Duty demands of Rs. 7,70,126/- and Rs. 5,16,548/- on account of differential freight and the trimming charges are set aside.

(c) Mandatory penalty of Rs. 12,86,674/- is set aside.

(d) Interest is not payable as the duty demands have been set aside.

(ii) In respect of Excise Appeal No.687 of 2006 filed by M/s Siddhartha Tubes Limited Sarangpur (i.e. Unit No. II), we order as under:

(a) The order disallowing the cenvat credit of Rs. 71,09,312/- (which includes Rs. 51,65,671/- as mentioned above) is set aside.

(b) Demand of interest is set aside.

28. The impugned orders passed by the Commissioner are modified to the extent indicated above. The appeals filed by Unit No. I and Unit No. II are allowed.

[Pronounced on 13 Feb 2008].

[Justice S.N. Jha]
President

[A.K. Srivastava]
Member [Technical]

[Pant]