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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/284/2008 Date 04/04/2008
E/S/323/08

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

To :
M/S WOCO MOTHERSON ELASTOMER LTD.

D-3, SECTOR-11,
NOIDA
M/S WOCO MOTHERSON ELASTOMER LTD. Appellant

Vs

C.C.E. MEERUT II Respondent

STAY ORDER NO. 289/08-EX.

I am directed to transmit herewith a certified copy of **Final order No. 128/08** . Excise dated 19-3-08

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. MEERUT II

OPP. SAHEED PARK (NEAR ASHOK KI LAT) DELHI
ROAD, MEERUT (UP)

2. Adv. / Consult

MR. V. LAXMIKUMARAN

B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029

3. ~~C~~.D.R.
~~4. JCDR.~~
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
13. TAX INDIA, B-XI/8183, Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
BENCH – Excise

E/S/323/08 in E/284/08

M/s. Woco Motherson Elastomer Ltd. — Appellant
(Rep. by Shri Vivek Sharma ,Adv.)

vs

CCE, Noida — Respondent
(Rep. by Shri V.K.Choudhary,SDR)

Coram : Hon'ble Mr. S.S.KANG,VICE PRESIDENT
Hon'ble Mr. B.S.V.MURTHY, MEMBER TECHNICAL

Date of Decision: 19.3.08
Final Order No. 128/08-EX
Stay order No. 299/08-Ex

Per S.S.Kang:

The applicant filed this application for waiver of pre-deposit of duty and penalty. The Commissioner(Appeals) dismissed the appeal filed by the applicants for non-compliance to the provisions of Section 35F of Central Excise Act on the ground that the applicants failed to comply with the condition of the stay order. Commissioner(Appeals) vide stay order directed the applicants to deposit 50% of the duty demand and 50% of the penalty. The contention of the applicant is that in the present case the applicant availed the credit in respect of input service and as per the Revenue, the same was wrongly availed. The applicant relied upon the Rule 15(3) of Cenvat Credit Rules which provides maximum penalty of Rs.10,000/- only in such case. The contention is that the applicant had rightly taken credit, therefore, it is not a case of imposition of penalty.

2. The contention of the Revenue is that the applicants wrongly availed the credit in some cases. They are not entitled for credit as the documents are not in favour of the applicant and some of the services are not specificed for taking credit in or in relation to the manufacture of final product.

3. We find that in the present case dispute is regarding the credit of inputs service. The applicants had already deposited 50% of the confirmed demand. We find that prima-facie the applicant had a strong case for waiver of pre-deposit of remaining amount of duty and penalties. In view of this, we find that 50% of the duty amount already deposited by the applicant is sufficient for hearing of the appeal. Therefore, pre-deposit of remaining amount of duty and penalty is waived.

4. We find that the Commissioner(Appeals) has not decided the appeal on merit and dismissed the appeal for non-compliance to the provisions of Section 35F of Central Excise Act. As the amount already deposited by the applicant i.e. 50% of the demand is sufficient for hearing of the appeal, therefore, the impugned order is set aside and matter is remanded to the Commissioner(Appeals) to decide the appeal on merit after affording an opportunity for hearing to the appellant. The appeal is disposed of by way of remand.

Order dictated in the open Court.

(S.S.Kang)
Vice President

(B.S.V.Murthy)
Member Technical

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