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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

Date 11/04/2008

Appeal No. E/901- 902&920 -921 /1998

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

To :
JAY SHREE STEELS
D-14/15 SECTOR 17-K.NAGAR AGRA
JAY SHREE STEELS

Appellant
Vs
Respondent

C.C.E. MEERUT I

I am directed to transmit herewith a certified copy of **Final order No.** 146-149/08 **Excise** dated 7-4-08

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 I
   EXCISE CHOWK, UNIVERSITY ROAD, MANGAL PANDEY NAGAR, MEERUT - 250005.
2. Adv. / Consult SH. NAVEEN MULLICK, ADV., B-388, MEERA BAGH, N. DELHI -63
3. S.D.R.
~~4. LCDR~~
5. Bar association. CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, Marg. 46, Saket. New Delhi 110017
7. M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12. Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai 6001
13. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Regist
(Excise Appeal Bran

2 JAY SHREE INDUSTRIES (INDIA)
D-16, SECTOR-17,KAVINAGAR IND.AREA GHAZIABAD
3 SH. SUDARSHAN KUMAR,
D-14/15 SECTOR 17,KAVINAGAR IND.AREA GHAZIABAD
4 SH. ASHWANI KUMAR,
D-16, SECTER-17, KAVINAGAR, INDL. AREA, GHAZIABAD

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R.K.Puram, New Delhi-110066.
Principal Bench, New Delhi.

Excise Appeal No.901-02 & 920-21/98

[Arising out of Order-in-Original No.02/Ayukt/Meerut-1/97 dt.13/14.8.97 passed by the Commissioner of Central Excise, Meerut)

For approval and signature:
Hob'ble Mr. S.S.KANG, VICE PRESIDENT
Hon'ble Mr. 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?	:	No
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:	No
3.	Whether their Lordships wish to see the fair copy of the order?	:	Yes
4.	Whether order is to be circulated to the Department Authorities:	:	No

M/s. Jay Shree Steel & Others — Appellant

Versus

CCE, Meerut — Respondent

Appearance

Sh. Naveen Mullick, Adv. For Appellant

Sh. H.K.Thakur, Authorised Departmental Representative(JCDR) For Respondent

Coram: Hon'ble Mr. S.S.KANG, VICE PRESIDEN
Hon'ble Mr. RAKESH KUMAR, MEMBER TECHNICAL

Date of decision: 7.4.08
FINAL Order No. 146-149/08-EX

Per S.S.Kang:

Heard both sides. The appellants submitted that one of the appellant Shri Sudarshan Kumar expired on 20.9.2000. In view of this the Appeal No.E/921/98 filed by Sh. Sudarshan Kumar abates in view of the provision of Rule 22 of CEGAT Procedure Rules.

2. The remaining are appeals filed against the common impugned order where the demand was confirmed and penalty was imposed. The adjudicating authority also confiscated the land, building, plant, machinery and allowed the same to be released on payment of redemption fine.

3. The demand was confirmed on the ground that the appellant availed credit without receiving the inputs and utilized the same towards payment of duty showing manufacture of goods out of the inputs so received. The case of the revenue is that the appellant had not undertaken any manufacturing activity which amounts to manufacture and the appellant had not received any inputs and only taken credit which was wrongly passed on to their customers without manufacturing any excisable goods.

4. The contention of the appellant is that the appellant shown clearance of goods on payment of duty and their customers had availed the credit and proceedings were initiated against those customers and demands were confirmed, therefore, for the same amount, the appellant cannot be penalized. The appellant also submitted that as per the SCN, some portion of the amount has shown to be reversed hence regarding this amount

demand cannot be confirmed. The contention is also that the appellants are not manufacturer of any excisable goods, therefore, they are not assessee. Under the Central Excise Act or Rules, hence no recovery can be made from the appellant.

5. The contention of the revenue is that the appellants are registered with the revenue authorities for the manufacture of excisable goods and also opted to avail the benefit of credit in respect of duty paid on inputs which are to be used in or in relation to the manufacture of final product. Therefore, the appellant cannot allege that they are not assessee under the Central Excise Act or Rules. The appellants availed the credit without receiving the inputs and passed on the same to the customers without supply inputs as such or manufactured of goods and these facts are not in dipute. Therefore, the credit which was wrongly taken and also to be utilized is recoverable under Rule 51 of the Central Excise Rules. The contention is that the appellant had not received any inputs nor manufactured of any excisable goods, therefore, recovery of credit wrongly availed or utilized is rightly made.

6. Admitted facts of the case are that the appellant had not received any inputs regarding which they had availed the credit and also had not manufactured any excisable goods. The appellant firstly had taken credit which was not available to them and thereafter by showing the clearance of manufactured goods to the customers utilized the same. In view of this

undisputed facts, we find that the appellants are not entitled for credit and also not entitled to utilize the same. Rule 57I of the Rules provides for recovery of credit wrongly availed of or utilized in an irregular manner. In view of the above facts, we find no infirmity in the impugned order and the appeals are dismissed.

Order dictated in the open Court.

(S.S.Kang)
Vice President

(Rakesh Kumar)
Member Technical

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