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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/1824/2009 - EX[DB]
E/S/1889/2009-EX

Date 21/08/2009

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

To :
M/S WIRES & FABRIKS (SA) LTD.
INDUSTRIAL AREA, JHOTWARA, JAIPUR.

M/S WIRES & FABRIKS (SA) LTD. Appellant
Vs
C.C.E. JAIPUR I STAY ORDER NO.820/2009-EX Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 533/2009-**EX[DB]** dated 20-8-09 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. JAIPUR I
   N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.
2. Adv. / Consult SH, ALOK KOTHARI, ADV.,
   A-192, MANISH MARG, NEMI NAGAR,
   GANDHI PATH, VAISHALI NAGAR, JAIPUR
3. C.D.R
4. ~~J.C.D.R.~~
5. Bar association, CESTAT, New Delhi
6. Director Publications, Customs, Excise. I.P. Estate, New Delhi
7. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8. Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
12. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
13. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
14. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
16. Office Copy
17. Guard file
18. HON'BLE PRESIDENT

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Excise Appeal No. 1824 of 2009 with
Excise Stay Application No. 1889 of 2009

(Arising out of Order-in-Appeal No. 27(DK)CE/JPRI/2009 dated 20.02.2009 passed by the Commissioner (Appeals), Customs & Central Excise, Jaipur-I).

DATE OF HEARING : 17.08.2009
DATE OF DECISION : 17.08.2009

FOR APPROVAL AND SIGNATURE :

HON'BLE MR. JUSTICE R.M.S. KHANDEPARKAR, PRESIDENT
HON'BLE MR. B.S.V. MURTHY, 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 ?	
2.	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not ?	
3.	Whether their Lordships wish to see the fair copy of the Order ?	
4.	Whether Order is to be circulated to the Departmental Authorities?	

M/s Wires & Fabriks (SA) Ltd. .... **Appellants**
(Rep by Sh. Alok Kothari)

VERSUS

CCE, Jaipur-I .... **Respondent**
(Rep. by Sh. P.K. Singh, DR)

CORAM : HON'BLE MR. JUSTICE RMS KHANDEPARKAR, PRESIDENT
HON'BLE MR. BSV MURTHY, MEMBER (TECHNICAL)

STAY ORAL ORDER NO. 820/09-EX
FINAL ORAL ORDER NO. 533/09-EX

PER B.S.V. MURTHY :

The appeal involves a short issue and, therefore, the stay application as well as appeal are taken up for disposal.

2. The duty amount of Rs. 1,26,620/- has been confirmed against the appellants with equal amount of penalty and interest, as applicable, on the ground that the appellants have not reversed the Cenvat credit actually taken on the capital goods at the time of their removal after the same having been used in their factory for some time.

3. The learned advocate for the appellants fairly submits that the issue involved in the present appeals is covered by the Larger Bench decision of this Tribunal in the case of **Modernova Plastyles Pvt. Ltd. vs CCE, Raigad,** 2008 (232) ELT 29 (T-LB), wherein the Larger Bench has held that, the expression 'as such' not having any connection with capital goods being new, unused or used and covers both capital goods cleared without being put to use and after use. Therefore, when capital goods are cleared after using the same for some time also, the credit availed has to be reversed. However, he submits that the penalty of equal amount has ~~to be~~ been imposed on them and in v iew of the fact that the issue involved interpretation of the Rules and the very fact that the matter has been referred to the Larger Bench also shows that there was a possibility of ~~true~~ different interpretation. Further, he also submits that in their reply to the show cause notice also they have stated that there was no malafide intention to evade duty and they were under the bonafide belief that the amount of credit

to be reversed would be payable on the transaction value. ~~Learned DR also fairly agrees.~~ We find considerable force in the arguments advanced by the learned advocate as regards the penalty and he also submitted that as regards the reversal of credit there was no dispute. In view of the fact that the question involved interpretation of the Rules and the issue matter has been referred to the Larger Bench, we consider that penalty is required to be set aside. In view of the above discussions, the appeal is partly allowed by setting aside the penalty imposed on the appellants. The appeal and the stay application stand disposed of in the above manner.

(JUSTICE R.M.S. KHANDEPARKAR)
PRESIDENT

(B.S.V. MURTHY)
MEMBER (TECHNICAL)

Golay