TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

CUSTOMS. EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Appeal No. E/5415/2004 - EX[DB]
E/5425/2004-EX

Date 28/08/2009

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

To :
M/S R.C.S. WIRES
H-17, BADHARNA, VKI-AREA, JAIPUR

2. M/S. S.K. INDUSTRIES,
F-449, ROAD NO. 12,
VKI-AREA, JAIPUR

M/S R.C.S. WIRES Appellant
Vs
C.C.E. JAIPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 552-553/2009- **EX[DB]** dated 25-8-09 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
NCRB, STATUE CIRCLE, C-SCHEME, JAIPUR
2. Adv. / Consult
MR.BIPIN GARG
B-1/1289,A-VASANT KUNJ, NEW DELHI-70
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

Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI

COURT – III

CENTRAL EXCISE APPEAL NO. 5415 & 5425 OF 2004

[Arising out of Order-in-Original No. 18/2004 dated 8.7.2004 & 19/2004 dated 7.7.2004 both passed by the Commissioner, Central Excise, Jaipur]

For approval and signature:

Hon'ble Dr. Chittaranjan Satapathy, Member (Technical)
Hon'ble Mr. P.K. Das, Member (Judicial)

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 would 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?	seen
4.	Whether order is to be circulated to the Departmental authorities?	yes

M/s. R.C.S. Wire,
M/s. S.K. Industries — Appellants

Vs.

C.C.E., Jaipur — Respondent

Appearance:

Shri Atul Gupta, C.S. for the appellants;
Shri P.K. Singh, S.D.R. for the Revenue

Coram:

Hon'ble Dr. Chittaranjan Satapathy, Member (Technical);
Hon'ble Mr. P.K. Das, Member (Judicial)

Date of hearing/decision: 25th August, 2009

FINAL ORDER NO. 552-553/09-EX **dated** ________

Per Dr. Chittaranjan Satapathy:

Heard both sides.

2. Shri Atul Gupta, learned Company Secretary, appearing on behalf of the appellants states that during the impugned period the appellants were not availing of the benefit of the decision of the Hon'ble Supreme Court that drawing of wire from wire rod does not amount to manufacture. Hence, they have taken credit on inputs used in the process of wire drawing and they have also paid duty on the wire while clearing the same. He states that duty paid is more than the credit taken. The department has sought disallowance of credit taken and has also made demand under Section 11D in respect of duty paid and collected on the wire. He states that the issue is covered by the decision of the Tribunal in the case of S.A.I.L. Bansal Service Centre Ltd. vs. CCE, Ranchi, reported in 2007 (220) ELT 520) (Tri. – Kolkata) wherein it has been held that demand for credit is not sustainable in such cases where duty paid is more than the credit taken. It has also been held that when impugned process does not amount to manufacture, notice e is not liable to duty and, hence, in such case, no demand can be made under Section 11D of

Central Excise Act, 1944. He prays that the appeal may be allowed following the ratio of the aforesaid decision of the Hon'ble Supreme Court.

3. Heard learned S.D.R. Shri P.K. Singh who states that the matter may be remanded to the lower authorities to decide afresh in the light of the Board's Circular No. 831/8/2006-CX dated 26.7.2006.

4. After hearing both sides and considering the decision of the Tribunal in the case of S.A.I.L. Bansal Service Centre Ltd. (supra), we allow the credit on duty paid on inputs and also hold that the noticees are not liable to duty when the process does not amount to manufacture. Following the ratio of the said decision, we observe that there is no need to remand these two cases as argued by the learned SDR and we allow the appeals filed by the appellants setting aside the impugned orders.

(Dictated & pronounced in the Open Court.)

(DR. CHITTARANJAN SATAPATHY)
MEMBER (TECHNICAL)

(P.K. DAS)
MEMBER (JUDICIAL)

RK