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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/1840/2009 - EX[DB] + Date 08/12/2009
E/S/ 1916/09-EX

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

To :
M/S KAJARIA CERAMICS LTD.
19 KM STONE, BHIWADI-ALWAR ROAD,
VILL.GAILPUR,
P.O.-TAPUKARA-301707, DISTT. ALWAR (RAJ.)
M/S KAJARIA CERAMICS LTD. Appellant

Vs

C.C.E. JAIPUR I STAY ORDER NO. 1395/2009-EX. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1274/ **2009 EX[DB]** dated 23-10-09 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
   MR.S. K. PAHWA
   MARWAH & PAHWA, J-75, AMAR COLONY, LAJPAT NAGAR, N. DELHI-24

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)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. I

Excise Appeal No. 1840 of 2009

[Arising out of the Order-in-Original No. 18/2009 (C.E.) dated 24/03/2009 passed by The Commissioner of Central Excise, Jaipur – I.]

For Approval and signature :

Hon'ble Justice R.M.S. Khandeparkar, President
Hon'ble Shri 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?	:	Yes
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?	:	Seen
4.	Whether order is to be circulated to the Department Authorities?	:	Y.

M/s Kajaria Ceramics Ltd. — Appellants

Versus

CCE, Jaipur – I — Respondent

Appearance

Shri S.K. Pahwa, Advocate – for the appellants.

Shri P.K. Singh, Authorized Representative (SDR) – for the Respondent.

CORAM : **Hon'ble Justice R.M.S. Khandeparkar, President**
Hon'ble Shri Rakesh Kumar, Member (Technical)

DATE OF HEARING : 23/10/2009.
DATE OF DECISION : 23/10/2009.

FINAL Oral Order No. 1274/09-EX Dated : ____________

Per. Justice R.M.S. Khandeparkar :-

Heard the learned Advocate and learned SDR.

2. Though the impugned order is sought to be challenged on various grounds, it is not necessary to consider all those grounds and suffice to refer to only one ground namely that the Commissioner disposed of the matter by merely relying upon the conclusions which are sought to be drawn by Assistant Commissioner in relation to failure on the part of the assessee to establish their claim that it was not possible to segregate the input services used exclusively for manufacturing activities from those which was utilised for trading activities without considering the points which were sought to be canvassed on behalf of the appellant.

3. The appellants are engaged in manufacture of ceramic tiles having their units located in the State of Rajasthan and Uttar Pradesh. They are having their corporate office at New Delhi and it is their case that they ~~are~~ used to take input service credit on the strength of distribution invoices raised by their corporate office in respect of advertising services, commission agency services, house keeping services, manpower recruitment services, AMC services, security services, exhibition services etc. and used to distribute such expenses between Gailpur plant and Sikanderabad plant in the ratio of 56% and 44% respectively. On

allegation that the appellants had wrongly availed the Cenvat credit amounting to Rs. 60,62,680/- (Rupees Sixty Lakh Sixty Two Thousand Six Hundred Eighty) during the period 2006-2007 on the services used exclusively for the exempted goods, show cause notice came to be issued and matter being contested, the same was disposed off by the impugned order. It is the case of the appellants that in support of their contention regarding the issue pertaining to stagnation of the input services, the appellants had produced certificate by the Chartered Accountant. Based on that, the Commissioner had directed the Assistant Commissioner to investigate into the matter and report to the Commissioner. It is the further case of the appellants that the Assistant Commissioner at no point of time called for any records from the appellants and without proper investigation arrived at a conclusion about unlawful availment of Cenvat credit of Rs. 55,38,139/- (Rupees Fifty Five Lakh Thirty Eight Thousand One Hundred Thirty Nine) and based on such observation of the Assistant Commissioner, the adjudicating authority held that 26% thereof would be inadmissible to the appellants under the Cenvat Credit Rules, 2004 and sought to disallow the same.

4. The impugned order discloses that the Commissioner after hearing the appellants had referred the matter to the Divisional Assistant Commissioner to verify the contentions of the appellants in relation to the matter in issue. The impugned order does not disclose what exercise or investigation was carried out by the Assistant Commissioner pursuant to such direction by the

Commissioner. However, it is the case of the appellants that at no point of time, no records were called for from the appellants. The impugned order does not disclose as to whether Assistant Commissioner had made any attempts in that regard. On the contrary, the finding of the Commissioner is to the effect that the Assistant Commissioner after getting the record examined came to the conclusion from the record that it could not be ascertained that the credit of Rs. 55,38,139/- was relating to the manufactured goods only. Merely with the said observation, the Commissioner has come to the conclusion that the appellants had failed to establish the case put-forth by the appellants. The analysis of the records in the impugned order, nowhere discloses that the Assistant Commissioner had really called for any records from the assessee, or that the nature and description of the records which were allegedly examined by the Assistant Commissioner before arriving at the said observation by the Assistant Commissioner. In the absence of any material to ascertain the nature and the description of the records which were allegedly examined by the Assistant Commissioner, one wonder as to how the Commissioner could have arrived at the finding on the liability of the appellants merely on the basis of an observation by the Assistant Commissioner. The Commissioner who was the Adjudicating Authority had, to analysis of the records by himself in order to fix the duty liability upon the assessee and he could not have delegated this function to his subordinate. Even assuming that the investigation could have been done through his subordinate, it was the duty of the adjudicating authority to arrive at a correct finding on the material issue on the basis of analysis of the records and all the materials placed before him and not to decide solely on the basis of the observation by his subordinate. Being so, the impugned order cannot be sustained.

5. For the reasons stated above, the impugned order is set aside and the matter is remanded to the Commissioner who shall decide the matter afresh in accordance with the provisions of law. The appeal is disposed off in the above terms.

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Member (Technical)

PK