

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

Appeal No. E/164 /2006-SM[BR]

Date 10/01/2008

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

To :
CCE,RAIPUR(CG)
CENTRAL
EXCISE,BUILDING,TIKRAPARA,RAIPUR(CG)

CCE,RAIPUR(CG)

M/S B.E.C.FERTILIZER LTD,

Appellant
Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No. 40/2008-SM[BR] dated 21.11.2007
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944


Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent

M/S B.E.C.FERTILIZER LTD,

SIRGITTI INDUSTRIAL AREA, SECTOR-
A,SIRGITTI,BILASPUR

2. Adv. / Consult SHRI. ABHISHEK JAJU ADV.

R-163, SECOND FLOOR GREATER KAILASH PART-I
NEW DELHI-48

3. S.D.R.

~~4. J.C.D.R.~~

5. Bar association, CESTAT, New Delhi

6. M/s. Deeparchi Publications, M-93, marg. 43, saket, New

7. M/s Centax Publications (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
(SM Appeal Branch)

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL, R.K. PURAM, W.B. NO.2, PRINCIPAL BENCH
NEW DELHI, COURT NO. III**

Excise Appeal No. 164 of 2006 –SM (BR)

[Arising out of order in appeal No. 138/RPR-I/2005 dated 10.11.2005 passed by the Commissioner (Appeals) Customs & Central Excise, Raipur]

Date of Hearing/ Decision: 21.11.2007

For approval and signature:

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. :
 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? :
-

Yes.

CCE, Raipur

Appellants

[[Rep. by Mr. S. Gautam, Authorized Representative (DR)]

Vs.

BEC Fertilizers Limited

Respondent

[Rep. by Mr. Abhishek Jaju, Advocate]

CORAM: Mr. P.K. Das, Member (Judicial)

final

ORDER

No.

40/08 SM(BR)

Per P.K. Das:

The issue involved in this case is as to whether the credit availed by the respondent on capital goods procured from their sister unit Bhilai Engineering Corporation Limited, Bhilai under proper duty paying documents is proper or not. It has been alleged that Bhilai Engineering Corporation Limited supplied the

capital goods to the respondent on the stock transfer basis which does not come under the definition of "purchase" and contrary to provisions of sub-rule (4) of Rule 7 of Cenvat Credit Rules and therefore, the credit availed by the respondent is ultra virus of the said rules. The adjudicating authority allowed the credit. Revenue filed appeal before the Commissioner (Appeals), which was rejected. Hence, the Revenue filed this appeal before the Tribunal.

2. Heard both sides and perused the record. The main contention of the learned authorized representative (DR) that it is a case of stock transfer and the respondent did not purchase the capital goods from their sister unit and therefore credit is not admissible in terms of sub-rule (4) of Rule 7 of Cenvat Credit Rules, 2002. Rule 7 of Cenvat Credit Rules, 2002 provides maintenance of documents and accounts. Sub-rule (4) of the said Rule provides that the manufacturer of final product shall maintain proper receipt, consumption and inventory of the inputs and capital goods in which the relevant information regarding the value, duty paid, the person from whom the inputs or capital goods have been purchased, is recorded and the burden of proof regarding the admissibility of cenvat credit shall lie upon the manufacturer taking such credit. I find that both the authorities below examined the documents in detail. The relevant portion of the order of the Commissioner (Appeals) is reproduced below:-

"5.2 Though it is not elaborated in the appeal as to how the appellant has drawn the inference that the impugned goods were supplied by the supplier to the respondent on stock transfer basis or free of cost, it appears that the confusion has arisen from the mention of words 'free issue items value' in the invoice. However, the mention of these words does not indicate 'stock transfer' or 'free supply' of the goods to the respondent. These terms have been used on the invoice to arrive at the 'transaction value' for the purpose of payment of duty as per Valuation norms of the Central excise law.

5.3 A ground of the appeal is that the credit taken by the respondent is ultra vires in terms of sub rule (4) of Rule 7 of the Cenvat Rules. Thus sub rule inter-alia pertains to maintenance of records of receipt, disposal, consumption and inventory of inputs and capital goods. The perusal of record of the case reveals that there is no allegation regarding the non maintenance of prescribed records by the respondent in respect of impugned goods on which the respondent availed cenvat credit. The allegation is therefore incorrect and ambiguously made and not supported with evidences.

5.4 As regards the credit taken by the respondent it is observed that they had received machines / machinery falling under Chapter 84 of the CETA, 1985 on payment of duty from the supplier under cover of excise invoices and they have availed credit on the same. Since there is no dispute regarding the receipt and use of impugned goods in the factory of manufacturer and duty paid character of the goods, and use of goods exclusively for manufacture of exempted goods, the basic requirement of cenvat rules stands complied with and the credit is allowable to the respondent.

5.5 The perusal of impugned order reveals that the adjudicating authority has examined the records of the respondent and allowed credit on finding that the impugned goods were purchased by the respondent and the supplier had paid appropriate duty on the impugned goods. The adjudicating authority also correctly observed that there is no restriction in the Cenvat Rules if capital goods are received from sister concern. I agree with the findings of the adjudicating authority and observe that there is no reason to interfere in the impugned order”.

4. I find that condition for allowing for cenvat credit provides under Rule 4 of Cenvat Credit Rules 2002. The Tribunal in the case of Showpla Ltd., vs. CCE, Noida reported in 2005 (179) ELT 254 (Tri. Del.) held that capital goods transferred to the appellant's sister unit, credit is admissible under Rule 4 of Cenvat Credit Rules, 2004. In view of that, I do not find any reason to interfere with the order of the Commissioner (Appeals). Accordingly, the appeal filed by the Revenue is rejected.

(Dictated and pronounced in the open Court)

(P.K. Das)
Member (Judicial)

[Pant]