

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/1795/2006-SM[BR]

Date 25/01/2008

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


To :
M/S R.M. PLOYPACK P LTD.
VILL GANESWHPUR OPP KESHARI STATION,
TARNA, SHIVPUR VARANASI[UP]

M/S R.M. PLOYPACK P LTD.

Appellant
Vs
Respondent

C.C.E ALLAHABAD

I am directed to transmit herewith a certified copy of Final order No. 158/2008-SM[BR] dated 17.1.2008 passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944


Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
C.C.E ALLAHABAD
38,M.G.MARG, CIVIL LINES, ALLAHABAD
2. Adv. / Consult
MR.BIPIN GARG
B-1/1289,A-VASANT KUNJ, NEW DELHI
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 & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R.K.Puram, New Delhi-110066.
Principal Bench, New Delhi.

Excise Appeal No.1795 of 2006-SM

(Arising out of Order-in-Appeal No.15/CE/Alld/2006 dt.23.2.06 passed by the Commissioner(Appeals), Allahabad)

For approval and signature:

Hon'ble Mr. T.K.JAYARAMAN, MEMBER TECHNICAL

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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 would 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 : Department Authorities

} Yes

Ms. R.M.Polypack Pvt. Ltd.

Appellant

VS

CCE, Allahabad
Appearance

Respondent

Shri Atul Gupta, CS for appellant
Ms. Archana Pandey, Authorised Representative(JCDR) For
Respondent

Coram: Hon'ble Mr.T.K.Jayaraman, Member Technical

Date of decision: 17.1.08
Final Order No. 158 / 08 SM (BR)

Per T.K.Jayaraman:

This appeal has been filed against Order-in-Appeal No.15/CE/Alld/2006 dt.23.2.06 passed by the Commissioner of Customs and Central Excise(Appeals). Allahabad.

2. Ld. Advocate who appears for the appellant stated that the demand in this case relates to the Cenvat credit availed on the inputs by the job worker in respect of the goods manufactured on job work basis and returned to the principal manufacturer. The job worker apart from receiving the raw-materials from the principal manufacturer obtains on his own certain inputs which he uses for the manufacture of goods on his own account and also on account of the principal manufacturer. According to the revenue, the job worker clears the said goods to the principal manufacturer without payment of duty and therefore, he would not be entitled to take any cenvat credit at all. Ld. Advocate argued that the facts of this case are identical ^{to} ~~in~~ the case of Sterlite Industries (I) Ltd. vs CCE, Pune reported in 2005(183)ELT.353(Tri.LB) wherein Larger Bench has ruled that the job worker who received goods from manufacturer under Rule 57~~F~~ of erstwhile Central Excise Rules,1944 is entitled to take credit of duty in respect of other inputs received directly and used by him in manufacture of said goods on job work basis. The reasoning of the Tribunal is that the impugned goods ~~are~~ ^{are} ~~on~~ neither exempted nor subject to Nil rate of duty. Hence, the provisions of Rule 57C would not be attracted in such cases.

3. Ld. Departmental Representative took me to the impugned order and reiterated the contentions of the revenue.

4. On a very careful consideration of the matter, I find that in terms of law only when the final product is subject to Nil rate of duty or exempted, Cenvat credit can be denied. In this case even though the job worker does not pay any duty on the goods cleared to principal manufacturer, ultimately the principal manufacturer clears ~~the~~ such goods on payment of duty. Therefore, the goods on which cenvat credit has been taken ~~on~~^{all} neither exempted nor subject to Nil rate of duty. Therefore, there is no legal sanction for denial of Cenvat credit on the ground that the job worker himself clears the goods without payment of duty. In any case, I am bound to follow the ratio of the Larger Bench decision (supra) which has not been set aside. Hence, I set aside the impugned order and allow the appeal with consequential relief.

Order dictated in the open Court.

(T.K.Jayaraman)
Member Technical

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