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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/3803/2006-SM[BR] Date 31/03/2008

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

To :
SHREE CEMENT LIMITED
BANGUR NAGAR, BEAWAR, RAJASTHAN.

SHREE CEMENT LIMITED Appellant
Vs
C.C.E.JAIPUR II Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 519 /2008 –SM[BR] Dated 13.2.2008 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.JAIPUR II
   NCRB, STATUE CIRCLE,C-SCHEME, JAIPUR.
2. Adv. / Consult
   MR. K. K.ANAD ADV.
   A-5 BASEMENT LAJPAT NAGAR-III NEW DELHI-110024
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 Publictions (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 – 110 066.
Principal Bench, New Delhi

COURT NO. II

Excise Appeal No. 3803 of 2006

[Arising out of the Order-in-Appeal No. 517 (HKS)/CE/JPR-II/2006 dated 08/09/2006 passed by The Commissioner (Appeals-II), Central Excise, Jaipur.]

For Approval and signature :
Hon'ble Shri S.S. Kang, Vice President

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	: No
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?	: Yes
4.	Whether order is to be circulated to the Department Authorities?	: No

Shree Cement Limited — Appellant

Versus

CCE, Jaipur — Respondent

Appearance

Shri Hemant Bajaj, Advocate – for the appellant.

Shri B.S. Suhag, Authorized Representative (DR) – for the Respondent.

CORAM : **Hon'ble Shri S.S. Kang, Vice President**

DATE OF HEARING : 13/02/2008.

Final Order No. 519/08-SM(BR) Dated : 13.2.08

Per. S.S. Kang :-

Appellant filed this appeal against the impugned order whereby credit of Rs. 1,32,921/- was denied in respect of the plain plates and credit of Rs. 22,474/- is denied on the ground that the same has been availed on triplicate copy of bill of entry generated of EDI System is not valid on duty paying document.

2. The contention of appellant is that the duty paid plates are received in the factory and the same are used in the fabrication of parts of the plant. The contention is that in the impugned order, Commissioner admitted the fact that the plates are used in the fabrication or modification of pre-heater, raw mill and coal mill etc. The contention is that as

these are used in fabrication or modification of the plant and machinery, therefore, the same becomes part and accessory of plant and machinery hence are liable for credit.

3. In respect of the denial of credit on the triplicate copy of entry, the contention is that duplicate copy has lost, therefore, credit was availed on the strength of triplicate copy of bill of entry. The applicants relied upon the Board Circular dated 23/02/99 and the decision of the Hon'ble Punjab & Haryana High Court in the case of **CCE, Ludhiana vs. Ralson India Ltd.** reported in **2006 (202) E.L.T. 759 (P & H)**. Applicant also relied upon the decision in the case of **India Cement Ltd. vs. CCE, Trichy** reported in **2006 (205) E.L.T. 170 (Tri. – Chennai)**.

4. Learned SDR on behalf of the revenue submitted that the plain plates of Steel are falling under Chapter 7208 of the Tariff and are not specified goods for the purpose of availing credit under Rule 57Q, therefore, credit was rightly denied. In respect of the denial of credit on triplicate copy of bill of entry, the contention is that as per the Rule 57G of Central

Excise Rules, the valid duty paying document is duplicate copy of bill of entry generated on Electronic Data Interchange System installed in Customs House. The contention is that there is nothing on record to show, where the duplicate has got and there is no explanation, therefore, in such a situation, the duplicate can be used by the others for taking credit, therefore, the taking of credit on triplicate bill of entry is rightly denied.

5. I find that in respect of the plates of Steel, the same are used for fabrication or modification of the plants. As per the definition of capital goods, the parts and components specified goods are also entitled for credit as capital goods. In these circumstances, the denial of credit of Rs. 1,32,921/- is not sustainable, hence set aside.

6. In respect of the denial of credit on the ground that the same was availed on the triplicate bill of entry, I find as per the Rule 57G, the duplicate copy of bill of entry generated in EDI System is valid duty paying document. In the case of Ralson India Ltd. (Supra) relied upon by the appellant, I find

that the Tribunal after taking into consideration, that in case where credit was allowed by Commissioner (Appeals) on original copy of invoice, in case duplicate is lost, held that as the Commissioner (Appeals) has satisfied that there is no dispute regarding duty paying credit on the inputs and the use in the manufacture of final product, therefore, the necessary satisfaction is there and this view is upheld by the Hon'ble High Court. In the case of India Cement (Supra), the credit was allowed without taking into consideration the provisions of the Rule 57G which was held as per the provisions of the Rule, the duplicate copy of bill of entry generated on the EDI System is valid duty paying document. The reliance of the appellant on the Board Circular dated 23/2/1999 will also not help the case as the instructions are to the fact that if all the particulars are not given in the duty paying document, in such a case if duty paying goods are received in the factory and the credit could not be denied. In the present case, the dispute is not regarding the particulars mentioned in the valid duty paying document, the issue is that the document is valid duty paying documents as per the provisions of Rule 57G of the rules. The triplicate copy of bill of entry is not valid on duty paying document as per the provision of Rule 57G of the rules, hence the credit was rightly denied. The appeal is disposed of, as indicated above.

(Dictated and pronounced in open court)

(S.S. Kang)
Vice President

PK