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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/2968 & 2929 /2006 –SM[BR] Date 04/04/2008

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

To :
1-2) M/S BHARAT ALUMINIUM CO LTD
PO BALCO NAGAR,KORBA(CG)
495684

M/S BHARAT ALUMINIUM CO LTD Appellant
Vs
C.C.E. RAIPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 556 -557 /2008 –SM[BR] dated 7.2.2008 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. RAIPUR
   DHAMTARI ROAD,TIKRAPARA,RAIPUR.
2. Adv. / Consult
   MR.V. LAXMIKUMARAN
   B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029
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
(Excise Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO.II

E/Appeal Nos.2968 & 2929 /2006-SM

(Arising out of order in appeal No.73/RPR/I/06 dated 11.5.06 and No.92/RPR.I/06 dated 7.6.06 both passed by the Commissioner of Central Excise (Appeals), Raipur)

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?

M/s Bharat Aluminium Co Ltd — Appellant
(Rep. by Shri Ravi Raghvan, Advocate)

Vs

CCE, Raipur — Respondent
(Rep. by Shri B.S. Suhag, DR)

Coram: Hon'ble Mr P.K. Das, Member(Judicial)

Date of Hearing: 7.2.2008

Final Order No. /2008-SM(BR)
No/556-557/08

Per P.K. Das:

The appellants filed these appeals against denial of credit on parts and componentsof capital goods. It has been alleged in the show cause notice that Cenvat credit on these components, parts etc. were admissible to the contractor who was the manufacturer of individual machines and not to the appellants. The Adjudicating Authority dropped the proceedings. The Revenue filed the appeal before the Commissioner (Appeals) whereby the adjudication order was set aside.

2. The learned Advocate submits that the Commissioner (Appeals) while passing ~~pening~~ the order, traveled beyond the scope of show cause notice. He submits that the Tribunal in the case of Mahalakshmi Glass Works Ltd Vs CCE Mumbai-I reported in 1999 (113) ELT 558 held that credit cannot be denied as the furnace is an immovable property. He also relied upon the decision of the Tribunal in the case of Gujarat Ambuja Cements Ltd Vs CCE Chandigarh reported in 2001 (130) ELT 129. He further submits that the adjudicating authority rightly dropped the proceedings as the parts and components were used in the machines in the factory by the appellants.

3. The learned DR reiterates the findings of the Commissioner (Appeals). He submits that the transaction is between principal to principal basis. He submits that the Paharpur Cooling Towers manufactured the machines where the parts and components were used and therefore, the appellant is not entitled to take credit on these parts and components and the machines are not excisable goods as immovable property.

4. After hearing both the sides and on perusal of the record, it is seen from the show cause notice that duty paying documents are to be issued in the name of appellants. It is noted that the adjudicating authority observed that the parts and components accompanied with the duty paying documents in the name of appellants and appellants utilized the same in their factory. The appellant used the machines in their factory for manufacture of final products. Clause (a) ~~Aa~~) of Rule 57-AA of the said Rules provides "Capital

Goods" means the specified items therein used in the factory of the manufacturer of the final products. The Adjudicating Authority observed that the parts were used in the factory of manufacturer of the final products. The show cause notice also indicates that the parts in question were used in the appellant's factory in the machines for manufacture of final products. So, there is no justification for denial of credit to the appellants.

5. I find that the Commissioner (Appeals) mainly denied the credit on the ground that the machines namely cooling towers, strip caster are an immovable property. I find that it has been alleged in the show cause notice that the credit is admissible to the contractor who manufactures the individual machines. Therefore, the finding of the Commissioner (Appeals) is beyond the scope of the show cause notice. In addition to that, the Tribunal in the case of Mahalakshmi Glass Works Ltd (supra) held that credit cannot be denied as the parts were used in the immovable property. Accordingly, the order of the Commissioner (Appeals) is set aside and the adjudication order is restored. The appeals are allowed with consequential relief.

(Order dictated and pronounced in the open Court).

(P.K. Das)
Member(Judicial)

MPS*