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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/3561/2006 -SM[BR] Date 10/10/2008

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

To :
M/S RUCHI CREDIT CORPN LTD
RIICO INDUSTRIAL AREA, VILLAGE- GOVINDPUR
BAWRI, KOTA-BUNDI ROAD, POST TALERA,
DISTRICT-BUNDI.

M/S RUCHI CREDIT CORPN LTD — Appellant
Vs
C.C.E.JAIPUR — Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1358 / 2008 – **SM[BR]** dated 10.9.2008 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
   NCRB, STATUE CIRCLE, C-SCHEME, JAIPUR.
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. 46. Saket. New Delhi 110017
7 M/s Centax Publictions (P) Ltd.. 1512-B. Bhishm Pitamah marg. Opp. ICICI Bank of Defence Colony. New - 3
8 Excise & Customs cases. B-37. Sector -1. NOIDA - 201301 Gautam Budh Nagar. (U.P.)
9 Raghuraman's 44-B. Regal Flat.Shipra Suncity. Indirapuram - 201010.Ghaziabad. DT. U.P.
10 Nidheshak publications. I.P.Estate. new Delhi
11 Taxmann Allied Service Pvt Ltd.. 21/35. West Punjabi Bagh. New Delhi - 110026
12 Commercial Laws of India Pvt Ltd Post Bag No. 1033. No.70(Old No. 88). Thyagaraya Road. T. Nagar.Chennai
13 Taxindiaonline.com Pvt.Ltd. B-XI/8183.Vasant Kunj. New Delhi - 110070
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-1
15 Office Copy
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Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. III

Excise Appeal No. 3561 of 2006-SM(BR)

[Arising out of Order-in-Appeal No. 223(GRM)CE/JPR-I/2006 dated 8.9.2006 passed by Commissioner (Appeals) Central Excise, Jaipur.]

For approval and signature:

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

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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 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? : y

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M/s. Ruchi Credit Corpn. Ltd. Appellant

Vs.

Commissioner of Central Excise Jaipur Respondent

Appearance: Mr. Bipin Garg, Advocate for the Appellant
Mr. K.K. Goyal, Jt.CDR for the Respondent

Date of decision : 10.9.2008

Final **ORDER NO. 1358 / 2008- SM-(BR)**

Per P.K.Das (for the Bench):

Relevant facts of the case in brief are that the appellants are engaged in the manufacture of Refined Edible Oil classifiable under sub-heading No. 1503.00 of the Schedule to the Central Excise Tariff Act, 1995. The appellant received the capital goods D.G. Sets in the month of March, 2003. Central Excise duty was levied on the branded Refined Oils on 1.3.03. Further, on 30.4.03 duty was levied ~~both~~ on ~~branded and~~ unbranded Refined oil also. The appellants installed the capital goods on 8.5.03 and obtained central excise registration on 9.5.03. They availed credit on the capital goods on 14.5.03. It has been alleged that no duty was payable at the time of receipt of capital goods and therefore the appellants are not eligible to avail credit on D.G. Sets. Adjudication authority confirmed the demand of Rs.2,68,966/- and imposed penalty of Rs.2000/- on the appellant. The Commissioner (Appeals) upheld the adjudication order.

2. After hearing both the sides and on perusal of the records, the main contention of the learned advocate is that the date of installation is relevant for eligibility of Cenvat credit. He relied upon the decision of

Hon'ble Bombay High Court in the case of Commissioner of Central Excise and Customs, Aurangabad vs. Rishi Steels & Alloys Pvt. Ltd. [2008 (224) ELT 222 (Bom)].

3. On the other hand, the learned Jt. CDR contended that the date of receipt of capital goods is relevant for admissibility of Cenvat Credit. He relied upon the decision of the Larger Bench of the Tribunal in the case of Spenta International Ltd. vs. CCE, Thane [2007 (216) ELT 133 (Tri-LB)].

4. The decision of the Hon'ble Bombay High Court in the case of Rishi Steels & Alloys Pvt. Ltd. (supra) relates to eligibility of Cenvat Credit in respect of compounded levy scheme under section 3A of Central Excise Act, 1944. In that case, the assessee received the capital goods on 22.3.2000 when they were under compounded levy scheme and installed the machinery after 1.4.2000 when the duty was levied at ad valoram on the duty. I find that the facts of the case before the Hon'ble High Court is not applicable herein. The Larger Bench of the Tribunal in the case of Spenta International Ltd. (supra) held that Cenvat credit eligibility is to be determined with reference to dutiablity of the final product on the date of receipt of capital goods. In the present case, it is seen that the final product was exempted at the time of receipt of capital

goods. The relevant portion of the said decision is reproduced below:-

> "7. In view of case of Binani Cement Ltd. vs. CCE, 2002 (143) ELT 577, the Tribunal held that vested right of taking credit arises on the date of receipt of the goods and that the date of installation of capital goods being only a deferred date of taking credit, for administration reasons, credit is eligible on the date of receipt of the goods. In CCE vs. Sengunthar Spinning Mills, 1998 (99) ELT 409, it was held that the availability of Modvat credit on capital goods has to be determined at the time of receipt of capital goods in the factory and if no modvat credit was available at that time, the question of subsequently making available any Modvat credit would not arise.
>
> 8. The recent decision of the Tribunal in CCE vs. Precot Mills Ltd. 2007 (212) ELT 483 follows the Surya Roshni decision and the Grasim Industries decision as well as the Sengunthar decision, to hold that the relevant date for determination of availability of Modvat credit is the date of receipt of capital goods in the factory and if on that date no credit was available, it cannot be allowed subsequently. It was held that when the machinery in respect of which the capital goods had been taken, were not used for manufacture of dutiable goods on the date of receipt in the factory, capital goods credit is not available on such machinery."

6. In view of the above decision of the Larger Bench, I find that the date of receipt of capital goods in the factory is relevant for the eligibility of credit. In this case, no duty was levied on the final product on the date of receipt of the capital goods, the appellants are not eligible to avail the

credit. The demand of duty is justified and upheld. As the issue is settled by the Larger Bench of the Tribunal, the penalty is not warranted. Accordingly, the demand of demand is upheld and penalty is set aside. The appeal is disposed of in the above terms.

(Pronounced in the open Court)

(P.K.Das)
Member(Judicial)

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