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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/1811/2006 – SM[BR]   Date 10/10/2008

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

To :
M/S VISHVA VISHAL ENGG LTD.

4/5,INDL AREA NANDININ ROAD,BHILAI

M/S VISHVA VISHAL ENGG LTD.   Appellant

Vs

C.C.E. RAIPUR   Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1359 / 2008 – **SM[BR]** dated 24.9.2008

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. RAIPUR

CENTRAL EXCISE BUILDING, DHAMTARI ROAD, TIKRAPARA, RAIPUR 492001.

2. Adv. / Consult

MR.K.K ANAND

A-5,BASEMENT,LAJPAT NAGAR-III NEW DELHI-24

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
16 Guard file

Assistant Registrar

(SM Appeal Branch)

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

E/Appeal No.1811/2006-SM(BR)

(Arising out of order in appeal No.15/RPR.II/2006 dated 1.3.2006 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?

No

Yes

M/sVishva Vishal Engg Ltd — Appellant
(Rep. by Shri Hemant Bajaj, Advocate)
Ms. A. Sunita Nayak, Advocate

Vs

CCE, Raipur — Respondent
(Rep. by Shr K.K. Goyal Jt. CDR)

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

Date of Hearing: 24 .9.08

Final Order No. 1359/ /2008-SM(BR)

Per P.K. Das:

The issue involved in this case is whether the Additional Customs Duty paid by the appellants by debit in DEPB can be availed as credit under the Cenvat Credit Rules. The Larger Bench of the Tribunal in the case of Essar Steel Ltd Vs CCE, Vishakhapatnam reported in 2004 (173) ELT 239 (Tri.LB) held that credit is not available. It is contended by the learned Advocate that in view of amendment of Exim Policy, Cenvat credit can be availed. The Commissioner (Appeals) observed that even after Exim Policy was amended w.e.f. 1.9.2004, the Cenvat Credit Rules have not been amended as to provide utilisation ~~amendment~~ of credit of additional customs duty paid through debit in DEPB. The learned Advocate relied upon the decision of the Tribunal in the case of Seshasayee Paper and Boards Ltd Vs CCE Salem reported in 2007 (217) ELT 562 (Tri.Che.). The Tribunal observed the question whether amendment of the Cenvat Credit Rules was necessary for carrying into effect amendment of the Exim Policy vide Notification No. 96/2004-Cus dated 17.9.2004 remained open. In ~~this case~~, the learned Joint CDR placed the Board Circular No. 59/2004-Cus dated 21.10.2004 wherein it has been clarified as under:-

"*DEPB Scheme:-*

6.1 One significant amendment made in DEPB Scheme is that additional customs duty paid through debit under DEPB shall be allowed to be availed as Cenvat credit or duty drawback. Hitherto, the additional customs duty paid through debit under DEPB was not being allowed as Cenvat credit or duty drawback. To give effect to this policy decision, a provision has been made in the notification governing the imports under DEPB Scheme viz., Notification No. 96/2004-Customs dated 17.9.2004. However, it may be noted that this facility would be available only in respect of the licences issued under the new Foreign Trade Policy. Licences issued under the previous Policies would be governed by the provisions of earlier Policies"

2. I find the matter requires to be examined in the light of Board Circular as to whether the appellant availed the credit on the basis of licence issued under new Foreign Trade Policy or earlier Policies. So, the impugned order is set aside and the matter is remanded back to the Adjudicating Authority to examine afresh in the light of the Board Circular in accordance with law.

(Order dictated and pronounced in the open Court).

(P.K. Das)
Member(Judicial)

MPS*