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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/2189/2006 – SM[BR] Date 12/11/2008

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

To :
M/S SHRIRAM SILICATE INDUSTRIES
2&2A, IND.ESTATE, ADHARTAL, JABALPUR, M.P.

M/S SHRIRAM SILICATE INDUSTRIES Appellant
Vs
C.C.E BHOPAL Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1449 /2008-**SM[BR]** dated 6.11.2008 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 BHOPAL
   HOSHANGABAD ROAD, 48, ADMINISTRATIVE AREA, AREA HILLS, BHOPAL (M.P.) 462011
2. Adv. / Consult
   MR.R.K. CHAUDHRY
   B-7, ABC APART. NAPIER TOWN JABALPUR [M.P]

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)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
R.K. PURAM, W.B. NO.2, PRINCIPAL BENCH
NEW DELHI, COURT NO.I

Excise Appeal No. 2189 of 2006 -SM

[Arising out of Order-in-Appeal No. 144/CE/BPL/2006 dated 12.5.2006 passed by the Commissioner (Appeals), Central Excise, Bhopal.].

Date of Hearing/Decision : 06.11.2008

For approval and signature:

Hon'ble Ms. Jyoti Balasundaram, 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.	:	Yes
2. Whether it should 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?	:	Seen
4. Whether Order is to be circulated to the Departmental authorities?	:	Yes

M/s Shri Ram Silicate Industries — Appellant

Vs.

CCE, Bhopal — Respondent

Appearance:

None for the appellant.
Mr. S. K. Panda, Authorized Representative for the respondent.

CORAM: Ms. Jyoti Balasundaram, Vice President

Final **Order** No. 1449/08-SM(BR)

Per Jyoti Balasundaram:

None appears on behalf of the appellant in spite of notice. Hence, I have heard the learned DR and perused the record.

2. The appellants who are manufacturers of sodium silicate avail cenvat credit facility under the Cenvat Credit Rules, 2002. It was noticed that they have taken excess cenvat credit on capital goods i.e. fire bricks amounting to Rs. 990/- i.e. 100% instead of 50%. Accordingly, a show cause notice was issued for recovery of excess credit taken under the provisions of Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11-A of the Central Excise Act, 1944 alongwith the recovery of interest under section 11AB and imposition of penalty under Rule 15 for violation of rule 4(2) of the Cenvat Credit Rules, 2004.

3. The adjudicating authority confirmed the demand and imposed penalty of Rs.10,000/- for the reason that the appellant could have taken credit only to the extent of 50% of the duty in the same financial year and remaining 50% in the subsequent financial year. The Commissioner (Appeals) upheld the adjudication order; hence this appeal.

4. There is no dispute regarding the fact that excess credit was taken. The only grievance of the appellant is against imposition of penalty. However, I find that since the credit has been taken wrongly, minimum penalty under the rules is required to be imposed and has been rightly imposed by the authorities below. In the absence of any appeal by the Revenue, the penalty cannot be enhanced but could be maintained as imposed by the adjudicating authority and upheld by the lower authority. I, therefore, uphold the impugned order and reject the appeal.

[Dictated and pronounced in the open Court]

[Jyoti Balasundaram]
Vice President

[Pant]