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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/1211/2006-SM[BR] Date 22/05/2008

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

To :
M/S NEHRU STEELS
233,ARYAPURI,
MUZAFFARNAGAR,

M/S NEHRU STEELS — Appellant
Vs
C.C.E. MEERUT I — Respondent

I am directed to transmit herewith a certified copy of **Final order No 806 /2008 -SM[BR]**. dated 3.3.2008 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. MEERUT I
   EXCISE CHOWK, UNIVERSITY ROAD, MANGAL PANDEY NAGAR, MEERUT - 250005.
2. Adv. / Consult
   MR.C.HARISHANKAR
   46, BANK ENCLAVE,DELHI-110092
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 Delhi -
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 60017
13. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Office Copy
15. 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. III

Excise Appeal No.1211 of 2006-SM (BR)

[Arising out of Order-in-Appeal No.243-CE/MRT-I/2005 dated 6.12.2005 passed by the Commissioner of Central Excise (Appeals), Meerut]

Date of Hearing/ Decision:03.03.2008

For approval and signature:

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

1. Whether Press Reporters may be allowed to see 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. Nehru Steels ...Appellants
[Rep. by Mr. S. Sunil, Advocate]

Vs.

CCE, Kanpur Respondent
[Rep. by Shri S. Gautam, DR.]

CORAM: **Mr. P.K. Das, Member (Judicial)**

Final Order No. 806/08-SM(BR)/Dated: 3.3.08

Per P.K. Das:

The relevant facts of the case, in brief, are that the appellants are engaged in the manufacture of SGCI Insets, Runner & Riser and Steel

Castings classifiable under sub-hading No.7203.00, 7204.90 and 7325.90 respectively of the schedule to the Central Excise Tariff Act, 1985. It has been alleged that during the period from April, 2003 to June, 2003, the appellant had defaulted in making payment of duty amounting to Rs.2,82,267/-, when they have the closing balance of Cenvat Account of Rs.685/- and Rs.8,801 for the month of April, 2003 and May, 2003 respectively. The appellant paid the defaulted amount in the month of July' 2003 and August, 2003 through RG-23 A Part-II Account. The adjudicating authority confirmed the demand of duty of Rs.2,82,267/-, which they failed to pay from PLA and payment of interest and also imposed penalty of Rs.25,000/- under Rule 25 of the Central Excise Rules, 2002. The Commissioner (Appeals) upheld the adjudication order.

2. Ld. Advocate on behalf of the appellant submits that the Hon'ble Bombay High Court in the case of Lloyds Steel Industries Limited Vs. Union of India reported in 2005 (183) ELT 351 (Bombay) held that the assessee is entitled to utilize Cenvat Credit for payment of central excise duty for the clearance of the final products in respect of forfeiture of facility, due to default of payment of duty. He also relied upon the decision of the Tribunal in the case of SCT Ltd. Vs. CCE, Meerut reported in 2006 (202) ELT 814 (Tribunal-Delhi).

3. Ld. DR submits that the present case is squarely covered by the decision of the Tribunal in the case of Plasweave Pvt. Ltd. Vs. CCE, Tirunelveli reported in 2007 (211) ELT 27 (Tribunal-Chennai). He submits that the case laws relied upon by the ld. Advocate are applicable in the case of forfeiture of default of payment of duty.

4. After hearing both the sides and on perusal of the records, I find that the appellants have not paid the duty during the period from April, 2003 to June, 2003 and they were not having sufficient amount in Cenvat Credit

Account on the last day of the relevant months. The appellant paid the duty subsequently from their Cenvat Account. Admittedly, the appellants had no sufficient balance in the Cenvat Account during the disputed period when the goods cleared without payment of duty. Therefore, they are not entitled to avail the Cenvat credit for the clearance of the good during the disputed period. The Tribunal in the case of Plasweave Pvt. Limited Vs. CCE, Tirunelveli (supra) held as under:-

> "5. Having carefully considered the submissions made by both sides and the case records, I find that the assesses had removed the goods without payment of duty to the extent of Rs.3,20,538/- in the case of RPL and Rs,2,32,424/- in the case of PPL during the material period which had been adjusted against Cenvat credit accrued later. Therefore, the duty demands are in accordance with law and are sustainable. The appellants shall pay the duty amounts in PLA. On such payment of duty in PLA, the assesses will be eligible for Cenvat credit to the corresponding extent in their Cenvat accounts. As regards the penalties on the assessees are concerned, I find that equal amount of penalty imposed in both the cases is too harsh in view of the peculiar facts of the case. Accordingly, I reduce the penalties to Rs.35,000/- on RPL and Rs.25,000/- on PPL. The penalty on Shri Murugan, the third appellant is reduced to Rs.2,000/-. The impugned orders are otherwise upheld."

5. The ld. Advocate relied upon the decision of the Hon'ble Bombay High Court and the Tribunal, which are related to forfeiture of facility of monthly/fortnightly payment of duty. The present case is not the payment of duty during the forfeiture period and the case laws are not applicable herein. I find that the appellant paid the duties from Cenvat Account for the payment of clearance of goods during the relevant period when they had no sufficient balance. So, the lower authorities rightly held that the appellants are not eligible for availing Cenvat credit for payment of duty during the material period.

6. In view of the above discussion, the Appellant is directed to pay the duty amount from the PLA and, therefore, the Appellant would be eligible for Cenvat Credit to the corresponding amount in their Cenvat accounts. The appeal is otherwise rejected.

Order dictated & pronounced in open court on 3.3.2008.

(P.K. Das)
Member (Judicial)

Ckp.