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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/3231/2006-SM[BR] Date 25/06/2008

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

To :
C.C.E.KANPUR

117/7,SARVODAYA NAGAR,KANPUR.

C.C.E.KANPUR Appellant

Vs

M/S G EETA INDUSTRIRES(P)LTD Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 988 /2008 –SM[BR] dated 15.5.2008

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar

(SM Appeal Branch)

Copy to :
1. Respondent

M/S G EETA INDUSTRIRES(P)LTD

125-B,DADA NAGAR,KANPUR.

2. Adv. / Consult SHRI A.K. DIXIT ADV.
113/ 145, SWAROOP NAGAR, KANPUR [U.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 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 & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. III

Excise Appeal No. 3231 of 2006 – SM (BR)

[Arising out of the Order-in-Appeal No. 307/CE/APPL/KNP/ 2006 dated 26/07/2006 passed by The Commissioner (Appeals), Customs & Central Excise, Kanpur.]

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 would 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 Department Authorities?	:

CCE, Kanpur — Appellant

Versus

M/s Geeta Industries (P) Ltd. — Respondent

Appearance

Shri S. Gautam, Authorized Representative (DR) – for the appellant.

Shri A.K. Dixit, Advocate – for the Respondent.

CORAM : **Hon'ble Shri P.K. Das, Member (Judicial)**

DATE OF HEARING : 15/05/2008.

Final Order No. 988/08-SM(BR) Dated : 15.5.08

Per. P.K. Das :-

It has been alleged that the Respondent cleared one old and used complete lamination plant and twelve old and used looms on payment of duty on the basis of transaction value during the period from March 2004 to September 2004. It has further been alleged that the Respondent availed credit amounting to Rs. 8,78,581.00 on the same machineries during the period August, 1995 to November 1995. Show cause notice proposed demand of duty of Rs. 7,70,252.00 and penalty in terms of Rule 3 (4) of Cenvat Credit Rules 2002. Adjudicating Authority confirmed the demand of duty along with interest and imposed penalty of equal amount. Commissioner (Appeals) set aside the adjudication order and allowed the appeal of the Respondent. Hence, the Revenue filed this appeal.

2. The learned DR on behalf of the Revenue reiterates the grounds of appeal. He submits that the respondent cleared the complete machine, and therefore Rule 3 (4) of the Rules is to be invoked. He further submits Rule 3 (4) of the Rules provides that when the capital goods removed, as such, the manufacturer shall pay duty at the rate applicable to such goods on the date of such removal.

3. The learned advocate on behalf of the Respondent reiterates the findings of the Commissioner (Appeals). He relied upon the decision of the Tribunal, as under :-

(i) Commissioner of Central Excise, Belapur vs. Reforms Machine Tools Ltd. reported in 2007 (220) E.L.T. 171 (Tri. – Mumbai)

(ii) Cummins India Ltd. vs. Commissioner of Central Excise, Pune – III reported in 2007 (219) E.L.T. 911 (Tri. – Mumbai)

4. After hearing both the sides and on perusal of the records, it is revealed from the show cause notice that the respondent received the capital goods during the period

August 1995 to November 1995 and March 1998. It is seen from the notice that the Respondent cleared one old and used complete lamination plant and twelve old and used looms on payment of duty on such transaction value under Section 4 of the Central Excise Act, 1944. The learned DR contended that the Respondent cleared the complete plant and looms which may be treated as removal as such. The respondent received the capital goods in the year 1995 and admittedly the complete plant and looms were used in their factory. Revenue's case is that the respondent cleared old and used plant and looms, therefore the contention of the learned DR at the time of hearing has no substance. The Tribunal in the case of Cummins India Ltd. (Supra) held that expression "as such" would be that capital goods were removed without putting them to use. In the present case, there is no dispute that the respondent cleared old and used capital goods. Rule 3 (4) of the Rules provides that when inputs or capital goods, on which CENVAT credit has been taken, are removed as such from the factory, the manufacturer of the final products shall pay an amount equal to the duty of excise which is leviable on such goods at the rate applicable to such goods on the date of such removal and on the value determined on such goods under sub section (2) of section 3 or section 4 or section 4A of the Act, as the case may be. I find that the respondent did not clear the capital goods, as such and therefore Rule 3 (4) of the Rules cannot be invoked. So, I do not find any merit in the appeal of the Revenue. Accordingly, the appeal filed by the Revenue is rejected.

(Dictated and pronounced in open court)

(P.K. Das)
Member (Judicial)

PK