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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/3518/2005 AND E/2454 / 2006 -SM[BR] Date 25/08/2008

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

To :
C.C.E JAIPUR-II
NEW CENTRA REVENUE BUILDING, STATUE
CIRCLE, C-SCHEME, JAIPUR
302005

C.C.E JAIPUR-II Appellant

Vs

M/S RIDHI SIDHI MILLS (INDIA) PVT LTD Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1176- 1177 / 2008 -SM[BR] dated 15.7.2008 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 RIDHI SIDHI MILLS (INDIA) PVT LTD
E-64, INDUSTRIAL AREA, IIND PHASE, PALI [RAJASTHAN]
2. Adv. / Consult MS. ASMITA NAYAR ADV.
N / V.;--------------

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. Easy Service Tax Online Dot Com Pvt. Ltd. 407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad - 15
15. Office Copy
16. Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH NEW DELHI

Excise Appeal No.3518/05-SM (BR)

[Arising out of common Order-in-Appeal No.497(HKS)CE/JPR-II/2005 dated 31.08.2005 passed by the Commissioner of Central Excise (Appeals-II), Jaipur]

Date of Hearing/ Decision:15.07.2008

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? :

CCE, Jaipur-II ...Appellants

[Rep. by Ms. Asmita Nayar, Advocate]

Vs.

M/s. Ridhi Sidhi Mills ...Respondent

[Rep. by Shri B.S. Suhag, DR]

Appeal No.E/2454 of 2006-SM (BR)

M/s. Ridhi Sidhi Mills ....Appellants

[Rep. by Ms. Asmita Nayar, Advocate]

Vs.

CCE, Jaipur-II ...Respondent

[Rep. by Shri B.S. Suhag, DR]

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

Final Order No. 1176-1177/2008-SM(BR)/Dated:15.07.2008

Per P.K. Das:

Both the appeals are arising out of a common order, therefore, both are being taken up together for disposal.

2. The relevant facts of the case, in brief, are that the assessees are engaged in the manufacture of processed fabrics falling under Chapter 54 and 55 of the Schedule to the Central Excise Tariff Act, 1985. During the course of audit, it was noticed that the assessee had wrongly availed Cenvat Credit of Rs.1,39,659/- on the specified inputs/in-process/finished goods lying in stock or in process as on 31.3.2003/01.04.2003. The Adjudicating Authority disallowed the Cenvat Credit of Rs.1,39,659/- along with interest and also imposed penalty of Rs.25,000/- on the assessee. The Revenue filed appeal before the Commissioner (Appeals) for enhancement of the penalty. The assessee filed appeal for setting aside the Adjudication Order. The Commissioner (Appeals) upheld the Adjudication Order. Hence, the Revenue and the assessee both filed these appeals.

3. After hearing both the sides and on perusal of the records, I find that the Tribunal in the case of M/s. B.B. Shah Pvt. Ltd. and Another Vs. CCE, Jaipur vide Final Order No.1655-1656/2007-SM (BR) dated 26.10.2007 held that notification was clear that it is only the ~~name~~ value of the fabrics, which has to be taken into account for the purpose of allowing

modvat credit. The Tribunal upheld the demand of duty and set aside the penalties imposed on the Appellants in the peculiar facts and circumstances of the case. In view of the decision of the Tribunal in the case of M/s. B.B. Shah (P) Ltd. (supra), the demand of duty is upheld and the penalty is set aside.

4. Regarding demand of interest, the ld. Advocate drew the attention of the Bench to the letter dated 27.2.2005 addressed to the Dy. Commissioner of Central Excise stating that the Credit taken on processing charges is lying un-utilized. The Tribunal in the case of M/s. Lafarge India Pvt. Ltd. Vs. CCE, Raipur vide Final Order No.103/2008-SM (BR) dated 11.01.2008 held that demand of interest is not sustainable on the Cenvat Credit if it is not utilized. I find that the matter is required to be examined by the Adjudicating Authority. Accordingly, the Adjudicating Authority is directed to examine the utilization of the Credit in respect of the demand of interest and to decide in light of decision of Tribunal in the case of M/s. Lafarge India Pvt. Ltd. (supra). Appeal No.E/3518/05-SM (BR) filed by the Revenue is dismissed. Appeal No.E/2454/06-SM (BR) filed by the assessee is disposed of in the above terms.

Order dictated & pronounced in open court on 15.07.2008.

(P.K. Das)
Member (Judicial)

Ckp.