

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/34 /2007 – SM[BR]

Date 28/11/2008

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

To :
C.C.E.CHANDIGARH
PLOT NO 19, SECTOR 17-C, CHANDIGARH.
C.C.E.CHANDIGARH

Appellant
Vs
Respondent

M/S GROZ BECKERT ASIA PVT LTD

I am directed to transmit herewith a certified copy of Final order No. 1544 / 2008- SM[BR] dated 23.10.2008
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 GROZ BECKERT ASIA PVT LTD

PLOT NO 133-135, INDL-AREA-I, CHANDIGARH.

2. Adv. / Consult SHRI VIKRANT KACKRIA ADV.

H.NO.631[FF] SECTOR 11-B, CHANDIGARH

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 Publications (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

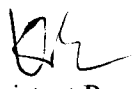
12 Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thvagarava Road, T. Nagar, Chennai

13 Taxindiaonline.com Pvt.Ltd, B-XI/8183, Vasant Kuni, New Delhi - 110070

14 Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-1

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16 Guard file


Assistant Registrar
(SM Appeal Branch)

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

E/Appeal No. 34/07-SM(BR)

(Arising out of order in appeal No.949/CE/Chd/06 dated 5.10.06 passed by the Commissioner of Central Excise (Appeals), Chandigarh)

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?
-

CCE, Chandigarh

Appellant
(Rep. by Shri R.K. Verma, DR)

Vs

M/s Groz Beckert Asia Pvt Ltd

Respondent
(Rep. by Shri Vikrant Kackria, Advocate)

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

Date of Hearing: 23.10.08

Final Order No. 1544 /2008-SM(BR)

Per P.K. Das:

The relevant facts of the case, in brief, are that during the financial year 2000-01, the respondents had taken and utilized 100% Cenvat credit on

capital goods. They were entitled to avail credit of 50% in the same financial year and the balance 50% in the subsequent financial year.

2. A show cause notice dated 2.1.20206 was issued proposing demand of interest on account of Cenvat credit of Rs.6,68,674/- wrongly taken and utilized, should not be charged from them in terms of Section 11AB of Central Excise Act, 1944 for the period 1.4.2000 to 1.4.2001 and penalty under Section 11AC of the act. The Adjudicating Authority confirmed the interest amount of Rs. 1,60,482/- under Section 11AB of the Act and imposed penalty of equal amount of interest under Section 11AC of the Act. The Commissioner (Appeals) set aside the adjudication order. Hence the Revenue filed this appeal.

3. After hearing both the sides and on perusal of the record, there is no dispute that the respondents are entitled to take the entire credit on the capital goods. It is seen that the appellants received parts and accessories of capital goods prior to 1.4.2000. The capital goods were installed after 1.4.2000. In terms of Rule 57-AC(2)(9) of erstwhile Central Excise Act, 1944, the respondents were entitled to avail credit of 50% within the financial year after 1.4.2000. The Commissioner has observed that the respondents were entitled to take the entire credit on the capital goods prior to 1.4.2000. It is also observed that the respondents took the credit after 1.4.2000 which is a deferred date and credit had been correctly availed. So, interest cannot be demanded. It is also contended that there is no demand of duty under Section 11A of the Act and demand of interest under Section 11AB is not sustainable.

4. The Tribunal in the case of Eicher Demm Vs CCE Chandigarh reported in 2002 (140) ELT 227 (Tri.-Del) held that invoking of penalty and

interest under Section 11AC and 11AB of the Act respectively can be made only in cases where determination regarding evasion of payment of duty had taken place under Section 11A of the Act. In the case of Madura Coats Pvt Ltd Vs CCE Tirunelveli reported in 2007 (7) STR 620 (Tri.-Bang), it was held that interest cannot be charged in absence of determination of duty under Section 11A of the Act. The Commissioner (Appeals) passed the order following the decision of the Tribunal in the case of Dhillon Kool Drinks Beverages Vs CCE New Delhi reported in 2000 (120) ELT 81 (Trib) wherein it has been held that demand of interest under Section 11AB of the Act does not arise in the absence of determination of duty liability under Section 11A(2) of the Act.

5. In the present case, I find that the respondents availed 100% credit in the financial year 2000-01 instead of 50% of credit. The respondents were entitled to utilize the balance 50% in the next financial year. No proceedings were initiated for alleged irregular availment of credit during the financial year 2000-01. So, the demand of interest under Section 11AB of the Act cannot be sustained without determination of demand of duty. In view of the decisions of the Tribunal as stated above, I do not find any reason to interfere with the order of the Commissioner (Appeals). Accordingly, the appeal filed by the revenue is rejected

(Order dictated and pronounced in the open Court).

MPS*

(P.K. Das)
Member(Judicial)