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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/2928/2006 – SM[BR] Date 05/12/2008

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

To :
M/S PLALSTOCHEM

C-215,INDL AREA,BULANDSHAHAR
ROAD,GHAZIABAD

M/S PLALSTOCHEM Appellant

Vs

C.C.E. GHAZIABAD Respondent

I am directed to transmit herewith a certified copy of **Final order No. 1586 / 2008- SM[BR]** dated 13.10.2008

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

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent

C.C.E. GHAZIABAD

CGO COMPLEX,KAMLA NEHRU NAGAR,GHAZIABAD.

2. Adv. / Consult
MR.BIPIN GARG

B-1/1289,A-VASANT KUNJ, NEW DELHI

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, NEW DELHI, PRINCIPAL BENCH NEW DELHI

In Appeal No.2928 of 2006-SM (BR)

[Arising out of Order-in-Appeal No.66-CE/GZB/2006 dated 29/30.05.2006 passed by the Commissioner of Central Excise (Appeals), Ghaziabad]

Date of Hearing/ Decision:13.10.2008

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? : No

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. Plastochem ...Appellants
[Rep. by Shri Bipin Garg, Advocate]
Vs.
CCE, Ghaziabad ...Respondent
[Rep. by Shri A.K. Rastogi, DR]

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

Final Order No. 1586/2008 SM(BR)/Dated:13.10.2008

Per P.K. Das:

The appellant filed this appeal against Order-in-Appeal dated 29.05.2006 passed by the Commissioner of Central Excise (Appeals), Ghaziabad. The relevant facts of the case, in brief, are that the appellants are engaged in the manufacture of Plastic Perform, Plastic Bottle, Plastic

Pipes, Plastic Socket falling under Chapter 39 of the 1st Schedule to the Central Excise Tariff Act, 1985. They purchased raw materials from the registered dealer under the cover of duty paying documents. It has been alleged that the dealer received the said materials from M/s. South Asian Petrochem Ltd. 100% EOU Export Oriented Unit, who had paid duty erroneously at Sl.No.3 to the Notification No.23/2003-CE dated 31.03.2003.

2. It has further been alleged that the supplier wrongly paid excess duty for the dutiable goods and, therefore, the appellant availed irregular credit. The Adjudicating Authority confirmed the demand of duty and imposed penalty of equal amount. The Commissioner (Appeals) upheld the Adjudication Order.

3. Ld. Advocate on behalf of the appellants submits that the appellant is the recipient of the inputs and the amount of duty cannot be re-assessed at their end. He further submits that the appellants had not utilised the credit. He also submitted that the appellant had accumulated the balance of credit in their Cenvat Account. He relied upon the decision of the Tribunal in the case of M/s. Rooptex Mineral Water Pvt. Ltd. Vs. CCE, Jaipur – Final Order No.515/2008-SM (BR) dated 7.3.2008.

4. Ld. DR reiterates the findings of the Commissioner (Appeals). He submits that there is subsequent development in the matter as the Revenue already initiated the proceedings against the supplier (i.e. M/s. South Asian Petrochem Ltd.), who settled their duty liability before the Settlement Commission. He placed the copy of the order vide Final Order No.F/121-122/CK/2006-SC (KB) dated 10.11.2006 passed by the Settlement Commission. He also submits that the supplier admitted the irregular payment of duty before the Settlement Commission.

5. After hearing both the sides and on perusal of the records, I find that the appellant is a recipient of the inputs and availed the credit on the

basis of duty paying documents. The payment of duty on the inputs cannot be reassessed at recipient end, as settled by the Hon'ble Supreme Court in the case of Sarvesh Refractories (P) Ltd. Vs. Commissioner of Central Excise & Customs as reported in 2007 (218) ELT 488 (SC). But in the present case, I find that there is a subsequent development of the issue as submitted by the ld. DR. Ld. Advocate on behalf of the appellants submits that they have not utilised the credit and they had huge balance of accumulated credit, which has been lapsed /adjusted against the demand. In any event, it is required to be verified as to whether the order placed by the ld. DR is applicable in the present case. In view of that, the matter is required to be examined by the adjudicating authority. Accordingly, the impugned order is set aside and the matter is remanded back to the Adjudicating Authority to decide afresh after examining the evidences in accordance with law. The appeal is allowed by way of remand.

Order dictated & pronounced in open court on 13.10.08.

(P.K. Das)
Member (Judicial)

Ckp.