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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/756 /2006-SM[BR] Date 19/05/2008

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

To :
CCE,JAIPUR
N.C.R.B.STATUE CIRCLE, C-SCHEME,JAIPUR

CCE,JAIPUR Appellant
Vs
M/S SPECIAL ENGG SERVICE LTD, Respondent

I am directed to transmit herewith a certified copy of **Final order** No. 777 / 2008 –SM[BR] dated 8.2.2008 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 SPECIAL ENGG SERVICE LTD,
118,TONK ROAD,DURGAPURA,JAIPUR
2. Adv. / Consult SHRI BIPIN GARG ADV.
B-1/1289-A, VASANT KUNJ NEW DELHI-70

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, NEW DELHI
PRINCIPAL BENCH NEW DELHI

In Appeal No.756 of 06-SM (BR)

[Arising out of order in appeal No.444(MPM)CE/JPR-I/05 dated 18.11.2005 passed by the Commissioner (Appeals-I), Central Excise, Jaipur]

Date of Hearing/ Decision:8.2.2008

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?	:	M.
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

...Appellants
[Rep. by Shri S. Gautam, DR]

Vs.

M/s. Special Engg. Service Ltd.

....Respondent
[Rep. by Shri Atul Gupta,Co. Secretary]

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

Final Order No.777/08-SM(BR)/Dated:8.2.2008.

Per P.K. Das:

Heard both sides and perused the records.

2. The brief facts of the case are that the Respondents are engaged in the manufacture of Races and components of Bearings classifiable under Heading No.84.82 of the Schedule to the Central Excise Tariff Act, 1985.

They availed credit on inputs and capital goods used in the manufacture of Bearing Races/Components cleared without payment of duty by availing benefit of Notification No.214/86 for job work. They used credit on inputs and capital goods in the clearance of dutiable bye-product i.e. M.S. Turning Scrap arising out of the manufacture of "Bearing Races/Components". The adjudicating authority denied credit on inputs and capital goods as the said items were used in the manufacture of exempted final products viz. Bearing Race/Components. The Commissioner (Appeals) set aside the adjudication order as the credits were used on the clearance of the bye-product namely, Turners as finished goods. The Revenue filed this appeal against the order of the Commissioner (Appeals).

3. Ld. DR on behalf of the Revenue reiterates the findings of the adjudicating authority. He submits that the duty paid inputs and capital goods were used in the manufacture of Bearing Races/Components, which are exempted products.

4. Ld. Counsel on behalf of the respondent reiterates the findings of the Commissioner (Appeals). He submits that the Larger Bench of the Tribunal in the case of Royal Industries vs. CCE reported in 2006 (205) ELT 353 (T-LB) held that credit cannot be denied on the inputs and capital goods used in the manufacture of job work material. He also relied upon the decision of the Tribunal in the case of Jindal Polymers Vs. CCE, Meerut-III reported in 2001 (135) ELT 657 (T-D).

5. After hearing both the sides and on perusal of the records, I find that the respondent availed credit on capital goods and inputs, which were utilized in the manufacture of Bearing Race/Components cleared without payment of duty under Notification No. 214/86-CE dated 1.3.86. The Respondent also cleared "M.S. Turning Scrap" on payment of duty,

generated during the manufacture of "Bearing Race/Components. They availed cenvat credit on the clearance of "M.S. Turning Scrap". The Commissioner (Appeals) observed that the bye-product viz. M.S. Turning Scrap is dutiable goods and there is no requirement of reversal of credit under Rule 6(1) of Cenvat Credit Rules, 2002. There is no dispute that the duty paid inputs and capital goods were used in the manufacture of "Bearing Races" cleared without payment of duty. Rule 6 of Cenvat Credit Rules, 2002 provides that Cenvat Credit shall not be allowed on such quantity of inputs, which were used in the manufacture of exempted goods. "M.S. Turning Scrap" was generated during the process of manufacture of exempted goods. So, the findings of the Commissioner (Appeals) is not sustainable. However, I find force in the submissions of the ld. Advocate that the finished goods "Bearing Race/Components" were cleared without payment of duty under Notification No.214/86-CE, which cannot be treated as exempted goods as held by the Larger Bench of the Tribunal in the case of Sunlight Industries Ltd., (supra) I find that the matter is required to be examined in the light of the decision of the Larger Bench. Accordingly, I set aside the impugned orders and remand the matter back to the adjudicating authority to decide afresh after considering the Larger Bench decision. The appeal filed by the Revenue is allowed by way of remand.

Order dictated & pronounced in open court on 8.2.2008.

(P.K. Das)
Member (Judicial)

Ckp.