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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/1900/2007 – SM [BR] Date 24/02/2009

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

To :
M/S ARHIANT TILE & MARBLE PVT. LTD.
N.H. 8, AMBERI, UDAIPUR

M/S ARHIANT TILE & MARBLE PVT. LTD. : Appellant
Vs
C.C.E. JAIPUR II Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 196 / 2009 - **SM[BR]** dated 13.2.2009 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. JAIPUR II
   N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.
2. Adv. / Consult SHRI V.N.SHUKALA ADV.
   B-6/10, SAFDARJUNG ENCLAVE
   NEW DELHI -29.

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
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Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, R.K. PURAM, W.B. NO.2, PRINCIPAL BENCH NEW DELHI, COURT NO.I

Excise Appeal No. 1900 of 2007

[Arising out of order-in-appeal No. 233/HKS/CE/JPR.II/2007 dated 23.3.2007 passed by the Commissioner (Appeals) Central Excise, Jaipur]

Date of Hearing/Decision : 13.02.2009

For approval and signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982.	NO
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3	Whether Their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

M/s Arihant Tile & Marble (P) Ltd., Appellant
[Rep. by Mr. V.N. Shukla, Advocate]

Versus

CCE, Jaipur Respondent
[Rep. by Mr. Sansar Chand, Advocate]

CORAM: Hon'ble Mr. M. Veeraiyan, Member (Technical)

Final **Order** No. 196/09-SM(BR)

Per M. Veeraiyan

This is an appeal against the order of the Commissioner (Appeals) 233/HKS/CE/JPR.II/2007 dated 23.3.2007.

2. Heard both sides.

3. The relevant facts, in brief, are as follows:-

a) Appellant was processing and converting marble blocks into marble slabs and was paying duty till 17.9.2003. On 18.9.2003, Hon'ble Supreme Court in the case of M/s Aman Marble Industries Pvt. Ltd., Vs. Collector of Central Excise, Jaipur -2003 (157) ELT 393 (SC), held that cutting of marble blocks into slabs did not amount to manufacture and no duty was leviable on marble slabs.

b) During the period from 01.04.2003 to 17.09.2003, the appellant has received certain capital goods like sawing machines used in converting blocks to slabs and taken 50% (Rs. 4,22,802/-) of the duty paid as cenvat credit.

c) Subsequent to the decision of the Hon'ble Supreme Court, the appellant stopped paying excise duty on the marble slabs. However, they had taken balance of 50% of the credit on the capital goods amounting of Rs. 4,22,802/- on 10.07.2004. and utilized the same towards payment of duty on other dutiable products cleared by them. The original authority held that inasmuch as the capital goods have been received when the goods were dutiable, right to take credit has accrued and part of the same taken in later point of time was valid. However, on appeal by the Department, Commissioner (Appeals) held that the credit of 50% taken in July 2004 is irregular and ordered recovery.

4.1. Learned Advocate submits that the relevant date for considering the eligibility of credit on capital goods is the date of receipt of the capital goods. Since they were paying duty till 17.09.2003, the duty paid on capital goods received by them was eligible as credit. It is a matter of procedure that the first 50% was allowed to be taken in the first financial year and the balance was allowed to be taken in the subsequent financial year. The right to credit having accrued, the subsequent development of the goods not being subjected to duty is not relevant. Since they have manufactured other dutiable products like tiles, balance credit taken by them in July, 2004 and utilized should be held legal.

4.2 He relies on the decision of the Tribunal in the case of Brindavan Beverages Pvt. Ltd., vs. CCE, Meerut-II -2008 (232) ELT 475 (Tri. Del.).

5. Learned DR reiterates the findings of the Commissioner (Appeals).

6.1. I have carefully considered the submissions from both sides. It is true that the Department was collecting excise duty on marble slabs arising out of marble blocks treating the marble slabs as arising out of manufacture. Consequently, the assessee was paying duty on such marble slabs and was taking credit of duty paid on the capital goods. However, the decision of the Hon'ble Supreme Court dated 18.09.2003 invalidated the levy of excise duty on marble slabs. The decision holding that conversion of marble block to marble slab did not amount to manufacture laid down the law not only from 18.9.2003 but that was the law for the period prior to 18.09.2003. In other words, the levy of duty on marble slabs arising out of marble block was not legal. Similarly, the credit taken on the capital goods used in conversion of marble block to marble slab is also not legal. Under these circumstances, there is no right vested on the appellant to take credit of duty paid on the impugned capital goods.

6.2 The decision relied upon by the learned Advocate in the case of Brindavan Beverages Pvt. Ltd., is on a different footing. The relevant portion of the said order is re-produced below:-

> "8. The availability of credit is dependent on factors/ conditions like duty paid nature of the capital goods, receipt of the same in the factory and use of the capital goods for manufacture of dutiable goods. In particular, the credit eligible is not based on capability but based on use in the manufacture of dutiable goods. These conditions are required to be fulfilled at the time of receipt of the capital goods which is the relevant

time. Subsequent developments cannot influence the eligibility. For example, the status of the goods manufactured may change from dutiable to exempt and vice versa. If the final products are dutiable when the capital goods are received and later on they get exempted then the credit taken on capital goods need not be reversed. Similarly the condition relating to capability to use the capital goods for manufacture should be considered at the time of receipt of the capital goods. In this case, admittedly the plant was not usable with out modification for the purpose of manufacturing dutiable goods. The certificate of the manufacturer relied upon by the appellant also confirms that the plant is usable for manufacture of aerated waters only after modification. Under these circumstances that they could manufacture some small quantity of dutiable goods in October 2006 after undertaking such modification and that too after issue of show cause notice and just before passing of the impugned order cannot alter the situation and make them eligible for the credit at the time of the receipt of the capital goods and utilization of the credit thereafter. They had no justification to take the credit at the time of receipt of the capital goods which were not usable as such for manufacture of dutiable goods."

6.3. The above decision is in the context of the goods which were dutiable goods getting exempted by a notification. In the present case, by the judgment of the Hon'ble Supreme Court the marble slabs were held to be not excisable and, therefore, the said decision cannot be applied to the present case.

7. In the light of the above, I do not find any infirmity in the order of the Commissioner (Appeals). The appeal is, therefore, rejected.

[Dictated and pronounced in the open Court]

[M. Veeraiyan]
Member (Technical)

[Pant]