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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/1804/2006-1805/2006 – SM[BR] Date 07/01/2009

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

To :
C.C.E. RAIPUR
CENTRAL EXCISE BUILDING, DHAMTARI ROAD,
TIKRAPARA, RAIPUR 492001.
C.C.E. RAIPUR Appellant
Vs
M/S S B A INDL CORP, Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 15 – 16 /2009 - **SM[BR]** dated 17.12.2008

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

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
1. M/S S B A INDL CORP,
2. SHRI D M ROJINDER, PROPRIETOR
6,INDL ESTATE,BHILAI DISTT DURG CG)
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
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Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R.K.Puram, New Delhi-110066.
Principal Bench, New Delhi.

E/1804-05/06-SM

[Arising out of Order-in-Appeal No.17&18/RPR-II/2006 dt.3.3.06 passed by the Commissioner(Appeals),Raipur)

For approval and signature:

Hon'ble Mr. RAKESH KUMAR, 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?
2. Whether it would 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 Department Authorities: :

M/s. CCE, Raipur — Appellant

Versus

M/s. S.B.A. Industrial Corpn. — Respondent

Appearance

Shri A.K.Rastogi, Authorised Departmental Representative(DR) For Appellant
Shri Atul Gupta, CS for respondent

Coram: Hon'ble Mr. RAKESH KUMAR, MEMBER (TECHNICAL)

Date of decision: 17.12.08
Final Order No. 15-16/09-SM(BR)

Per Rakesh Kumar:

The respondent is a SSI unit availing of SSI exemption. However, prior to 1.4.99, the respondent was availing of Cenvat credit service and paying duty at normal rate. W.e.f. 1.4.99, the respondent switched over to SSI exemption benefit. However, as on 1.4.99, stock of inputs, in respect of which Cenvat credit amounting to Rs.1,97,828/- had been taken, was lying in stock. The point of dispute is as to whether this credit was required to be reversed when the respondent switched over to SSI exemption scheme. The Commissioner(Appeals) vide the impugned order-in-appeal dt.3.3.06, relying upon the Tribunal's judgment in case of CCE vs Ashok Iron & Steel Fabricators reported in 2002(140)ELT.277, held that the credit on the inputs lying in stock was not required to be reversed. Another issue in this case is regarding duty on scrap. The Commissioner(Appeals) in the impugned order upheld the demand of duty amounting to Rs.32,000/- on the scrap but he reduced the penalty on the Appellant to Rs.32,000/- in view of reduction of the duty demand while upholding the penalty of Rs.10,000/- on the respondent under Rule 173Q. However, the Commissioner(Appeals) set aside the penalty of Rs.5,000/- imposed on Shri D.M.Rojinder, Proprietor of the respondent firm. The Revenue has filed appeal against this order of the Commissioner(Appeals) challenging – (a) the order of the Commissioner(Appeals) setting aside the demand of Cenvat credit amounting to Rs.1,97,828/- in respect of the cenvated inputs lying in stock as on 1.4.99 and (b) setting aside the penalty of Rs.5,000/- imposed on Shri D.M.Rojinder, Proprietor of the respondent firm under Rule 209A of Central Excise Rules,44.

2. Ld. DR pleaded that on the issue of reversal of credit on the inputs lying in stock when SSI switched over to SSI exemption or the finished product manufactured by the assessee out of Cenvated inputs gets fully exempted, the Tribunal in the case of Albert Davit Ltd. vs CCE, Meerut reported in 2003(55)RLT.144 has held that the Cenvat credit is required to be reversed and the SLP against this judgment of the Tribunal was dismissed by the Hon'ble Supreme Court vide order 2003(157)ELT.A-81. He pleaded that the Tribunal in the case of CCE, Ghaziabad vs Explicit Trading & Marketing (P) Ltd. reported in 2004(169)ELT.205 held that when the finished goods become exempt from duty and not eligible for Cenvat credit, the Cenvat credit already taken in respect of inputs lying in stock as well as contained in finished goods lying in stock as on the date of exemption, is required to be reversed. In view of this, he pleaded that the Commissioner(Appeals)'s order setting aside the demand of Cenvat credit of Rs.1,97,828/- is not correct. He also pleaded that the Commissioner(Appeals)'s order reducing the penalty under Section 11AC to Rs.32,000/- was also not correct. On the issue of setting aside the penalty on Shri D.M.Rojinder, Proprietor of the respondent firm, he pleaded that penalty on Shri D.M.Rojinder had been correctly imposed

and the Commissioner(Appeals) has set aside the penalty without any justification.

2.1 Shri Atul Gupta,Company Secretary, the Ld. Counsel for the respondent pleaded that in respect of the main issue in this case – whether the Cenvat credit of the inputs lying in stock on the date when the respondent switched over a SSI exemption, is required to be reversed or not, the Larger Bench of the Tribunal in a recent case of HMT & Others vs CCE, Panchkula reported in 2008-TIOL-1884-CESTAT-DEL-LB has held that in such situation, the Cenvat credit is not required to be reversed and in this judgment, the Tribunal has also discussed its earlier judgment in the case of Albert David Ltd. (supra) the SLP against which has been dismissed by the Hon'ble Supreme Court and also some other earlier judgments of the Tribunal where a contrary view had been taken. He, therefore, pleaded that in view of this judgment of the Tribunal, the Commissioner(Appeals)'s order setting aside Cenvat credit demand of Rs.1,97,828/- is correct and there is no infirmity in it.

2.1.1 On the question of penalty on Shri D.M.Rojinder, Proprietor of the respondent firm, he stated that when penalty of Rs.32,000/- under Section 11AC and another penalty of Rs.10,000/- under Rule 173Q(1) has been upheld by the impugned order on the respondent firm, there is no justification for separate penalty on the proprietor. In this regard he relied upon the judgment of the Tribunal in the case of CCE, Surat-I vs N.D.Textile reported in 2004(168)ELT.381 wherein this Tribunal held that when penalty has been imposed on a firm, there is no necessity to impose a separate penalty on proprietor under Rule 209A.

3. I have carefully considered the submissions from both the sides. As regards the first issue as to whether Cenvat credit of Rs.1,97,828/- in respect of inputs lying in stock as on 1.4.99, when the respondent firm switched over to SSI exemption and the finished product of the Respondent became fully exempt of duty is to be reversed or not, the Larger Bench of the Tribunal in a recent judgment in the case of HMT & Others vs CCE, Punchkula(supra) and earlier five Members Bench of the Tribunal in the case of CCE, Rajkot vs Ashok Iron & Steel Fabricators reported in 2002(140)ELT.277 has held that in such a situation, the credit on the inputs lying in stock and the inputs contained in the finished products lying in stock on the date of exemption, is not required to be reversed. Though there is a contrary judgment of the Tribunal in the case of Albert David Ltd. vs CCE(Supra) and the SLP against this judgment has been dismissed by the Hon'ble Supreme Court, the mere dismissal of a SLP by the Supreme Court does not lay down any law. Moreover, I find that SLP against the Tribunal's decision in the case of Ashok Iron & Steel Fabricators(supra) had also been dismissed. In view of this, following the judgment of the Tribunal in the case of HMT & Others vs CCE, Punchkula and Ashok Iron & Steel Fabricators(Supra), I hold that the Commissioner(Appeals)'s order is correct on this issue.

4. As regards setting aside of penalty on Shri D.M.Rojinder, Proprietor of the respondent firm, since penalty of Rs.32,000/- under Section 11AC and penalty of Rs.10,000/- under Rule 173Q(1) was upheld on the respondent firm, in view of Tribunal's judgment in the case of CC vs N.D.Textile (supra), separate penalty on the proprietor Shri D.M.Rojinder was not called for and the same was correctly set aside. In view of the above discussion, ~~we~~ I find no infirmity in the impugned order. The Revenue's appeals are dismissed.

Order dictated in the open Court.

(Rakesh Kumar)
Member Technical

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