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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/2218/2007 – SM[BR] Date 05/06/2009

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

To :
C.C.E. INDORE
MANIK BAGH PALACE, POST BOX NO. 10, INDORE
452001 (M.P.)

C.C.E. INDORE Appellant

Vs

M/S PARRYWARE ROCA PVT. LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 542 / 2009 –SM[BR] dated 6.5.2009 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 PARRYWARE ROCA PVT. LTD.
   INDL. AREA NO. 2, A.B. ROAD, DEWAS (MP)
2. Adv. / Consult SHRI ALOK BARTHWALADV.
   "LAKSHMI VIHAR", AG-192
   SCHEME NO.-54, VIJAY NAGAR INDORE[M.P]
3. S.D.R
4. ~~J.C.D.R~~.
5. Bar association. CESTAT. New Delhi
6. Director Publications. Customs. Excise. I.P. Estate. New Delhi
7. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8. Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9. Raghuraman's 44-B. Regal Flat.Shipra Suncity. Indirapuram - 201010.Ghaziabad. DT. U.P.
10. M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11. M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
12. Taxindiaonline.com Pvt.Ltd. B-XI/8183.Vasant Kunj. New Delhi - 110070
13. Taxmann Allied Service Pvt Ltd., 21/35. West Punjabi Bagh. New Delhi - 110026
14. Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15
15. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
16. Office Copy
17. Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

In Excise Appeal No.2218 of 2007-SM

[Arising out of Order-in-Appeal No.IND-I/101/2007 dated 27.04.2007 passed by the Commissioner of Central Excise (Appeals-I), Indore (M.P.)]

Date of Hearing/ Decision:6.5.2009

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? : Yes

CCE, Indore (M.P.) ...Appellants
[Rep. by Shri Sansar Chand, DR]

Vs.

M/s. Parryware Roca (P) Ltd. ...Respondent
[Rep. by Shri Alok Barthwal, Advocate]

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

Final Order No. 542/09-SM(BR) /Dated:06.05.2009

Per P.K. Das:

After hearing both the sides and on perusal of the records, it is seen that the respondents had applied for remission of duty on finished goods namely Sanitary Ware, which were broken in their factory and subsequently destroyed under the supervision of the Central Excise Officers. Application for remission of duty was allowed subject to the condition that cenvat credit on inputs used in finished goods has to be reversed. The respondents reversed the credit on the inputs used in the manufacturer of Sanitary Ware "under protest". They have also filed refund claim of the amount of credit reversed by them "under protest" The Original Authority rejected the claim of the respondents. The Commissioner allowed the refund ~~credit~~ following the decision of the larger Bench of Tribunal in the case of Grasim Industries Vs. Commissioner of Central Excise, Indore reported in 2007 (208) ELT 336 (Tribunal-LB).

2. Ld. DR on behalf of the Revenue submits that the respondent had not challenged the remission order and, therefore, they are not eligible to refund of credit. He further submits that the conditions of remission order is subject to the reversal of the duty, which was not challenged by them.

3. Ld. Advocate relied upon the decision of the Tribunal in the case of Hindustan Coca-Cola Beverages P. Ltd. reported in 2007 (216) ELT 418 (Tribunal-Ahmd.), wherein it has been held that remission of duty on final product granted on condition of reversal of credit on input cannot be equated to order of assessment and condition of reversal of credit is not legally tenable.

4. In reply, ld. DR submits that if the order of remission of duty was not appealed and it is final. I do not find any force in the submissions of the ld. DR. There is no dispute that in view of the decision of the larger bench of the Tribunal in the case of Grasim Industries (supra), the respondent is eligible to refund of duty on merit. It is seen that on identical situation, the Tribunal allowed refund in the case of Hindustan Coca-Cola Beverages P. Ltd. (supra). The relevant portion is reproduced below:-

> "6. I have carefully considered the submissions from both sides. The remission of duty on the finished goods has been upheld by the Commissioner (Appeals) vide his order dated 30.07.2003. That there is no need for reversal of credit taken of input which has gone into the goods destroyed on which remission has been granted is confirmed by the clarification of the Board dated 7.8.2002. The Larger Bench of the Tribunal in the case of Grasim Industries cited supra, has also upheld the same view. On merit, they are not required to reverse the credit. They have wrongly reversed the credit. They claimed the refund within the time limit prescribed.
>
> 7. The Commissioner (Appeals) held that since the condition in the order of remission has not been challenged by filing appeal against the order of Commissioner, the refund is not permissible.

> The condition imposed in the order of remission is not legally tenable. The remission granted has been upheld by the earlier order dated 30.07.2003 of the Commissioner (Appeals). Order of remission can not be equated to order of assessment. Therefore, the reasoning given by the Commissioner is not acceptable."

5. In view of the above discussions, I do not find any reason to interfere the order of the Commissioner (Appeals). Accordingly, the appeal filed by the Revenue is rejected.

Order dictated & pronounced in the open court on 6.05.2009.

(P.K. Das)
Member (Judicial)

Ckp.