TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Appeal No. E/389 /2006 - EX[DB] Date 28/08/2009

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

To :
NABHA STEEL LTD.
G.T. ROAD, SIRHIND SIDE,
MANDI GOBINDGARH

NABHA STEEL LTD. Appellant
Vs
C.C.E. CHANDIGARH Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 549/2009-**EX[DB]** dated 25-8-09 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
   C.C.E. CHANDIGARH
   C.R. BUILDING, PLOT NO. 19, SECTOR 17-C, CHANDIGARH 160017
2. Adv. / Consult
   MR.K.K ANAND
   A-5,BASEMENT,LAJPAT NAGAR-III NEW DELHI-24

3 C.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
(Excise 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/389/06

(Arising out of Order-in-Appeal No.369/CE/CHD/05 dt.30.9.05 passed by the Commissioner(Appeals), Chandigarh)

M/s. Nabha Steel Ltd. Appellant

Versus

CCE, Chandigarh Respondent

Appearance
Sh. Hemant Bajaj, Adv. For Appellant

Sh. Sunil Kumar, DR for Respondent

Coram: Hon'ble Mr. D.N.PANDA, JUDICIAL MEMBER
Hon'ble Mr. RAKESH KUMAR, MEMBER (TECHNICAL)

Date of decision: 18.8.09
FINAL Order No. 549/09-EX

Per D.N.Panda:

Ld. Counsel Shri Hemant Bajaj submits that the impediments as to grant of cenvat credit against discharge of additional customs duty through DEPB credit earned prevailing in 2003, was removed in terms of Notification No.28(RE-2003)/2002-07 dt.28.1.04. Accordingly additional duty discharged using DEPB credit shall be treated as duty paid and shall entitle an assessee to Cenvat credit to the extent of additional duty so discharged. This has been done in terms of para 11 of the subsequent notification stating that the last sentence of paragraph 4.3.5 of relevant notification issued earlier under EXIM Policy stands deleted. Thus in view of such deletion, the appellant cannot be denied of Cenvat credit of the additional customs duty discharged through DEPB credit earned. Accordingly, the demand raised disallowing Cenvat credit of Rs.5,12,730/- imposing equal amount of penalty under Section 11AC of Central Excise Act,1944 and penalty of Rs.50,000/- for violation of Rule 25(1)(d) of Cenvat Credit Rules,2002 was unwarranted. He therefore prays that neither duty demand nor penalty may be imposed where there was a confusion in the implementation of the incentive scheme of the Exim Policy. His further submission is that there was no intention on the part of the appellant to avail Cenvat credit wrongly.

2. Ld. DR Shri Sunil Kumar points out that the issue before the ld. adjudicating authority was whether Cenvat credit was admissible when additional customs duty was not paid but adjusted through DEPB credit. Such issue arose in terms of 4.3.5 of Exim Policy 2003-07 when the appellant was not entitled to incentive. Therefore claim thereof by the Appellant was unlawful. Accordingly, adjudication as well as appellate orders were rightly passed.

3. Heard both sides and perused the records.

4. The appellant had received 398.010 M.T of Heavy Melting Scrap from M/s. Globe Impex Wazirpur Industrial Area, Delhi. This quantity is part of the consignment of 444.960 m.t. imported under Bill of Entry No.38800 dt.6.8.03. Additional customs duty leviable under Section 3 of Customs Tariff Act,1975 was not paid in cash. The appellant availed benefit of Cenvat credit pleading that discharge of additional customs duty through DEPB is also permissible under law. Both the authorities disagreed with the appellant on the grounds that improper manner of discharge of additional customs duty shall not entitle ~~an~~ the appellant to Cenvat credit. But a peculiar feature that has come out to notice is that the impediment of denial of cenvat credit of additional customs duty discharged through DEPB was removed after four months of import of the goods by the appellant through a subsequent notification. ER.I return of the appellant for the month of August had disclosed the transaction. Notification dt.28.1.04 granted relief to similarly situated cases after the impediment was removed. This may be a mitigating factor to remove the hardship of penalty only. But when the embargo was in operation during a particular period that can not be said to have been removed by a subsequent notification retrospectively without intention of legislature in that behalf. Therefore, the appellant shall not get any concession in respect of disallowance of the Cenvat credit.

Accordingly, disallowance of Rs.5,12,730/- towards Cenvat credit stands confirmed.

6. So far as equal amount of penalty of Rs.5,12,730/- is concerned, there is no necessity to penalize the appellant because soon after Aug'03, similarly situated cases got relief by Notification dt.28.1.04 as has been pointed out by the Ld. Counsel. Accordingly, there shall be waiver of penalty of Rs.5,12,730/-. In respect of penalty of Rs.50,000/-imposed for violation of Cenvat Credit Rules, that does not call for any interference since the appellant had already availed undue benefit for a long period. Accordingly penalty of Rs.50,000/- is confirmed. Interest liability, if any, in terms of adjudication order shall follow.

4. In the result, appeal of the appellant is partly allowed to the extent indicated above.

(D.N.Panda)
Judicial Member

(Rakesh Kumar)
Member Technical

km