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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/1118/2007 – SM[BR] E/CO/135 /2007-SM[BR] Date 16/06/2009

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

To :
C.C.E. JAIPUR II
N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME,
JAIPUR 302005.

C.C.E. JAIPUR II Appellant

Vs

M/S J.M.METALS Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 569 / 2009 –SM[BR] dated 3.6.2009 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 J.M.METALS
   E-21(A), MIA, IIND PHASE, BASNI, JODHPUR (RAJ.)
2. Adv. / Consult SHRI K.K.ANAND ADV.
   A-5, BASMENT LAJPAT NAGAR –III
   NEW DELHI

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)
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Assistant Registrar
(SM Appeal Branch)

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

Excise Appeal No.1118 of 2007 & E/CO/135 of 2007-SM (BR)

[Arising out of Order-in-Appeal No.46(HKS)CE/JPR-II/2007 dated 1.2.2007 passed by the Commissioner of Central Excise (Appeals-II), Jaipur]

Date of Hearing/ Decision:3.6.2009

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?	:	NA.
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, Jaipur-II ...Appellant
(Rep. by Shri S.K. Bhatnagar, DR)

Vs.

M/s. J.M. Metals ...Respondent
(Rep. by Shri Hemant Bajaj, Advocate)

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

Final Order No. 569/09 -SM (BR) /Dated:03.06.2009

Per P.K. Das:

Heard both sides and perused the records.

2. The issue involved in this case is as to whether the Cenvat Credit taken on furnace oil used in the process of Hot Rolling of goods manufactured on job work basis is required to be reversed or not. The

Original Authority dropped the demand of duty. Revenue filed appeal before the Commissioner (Appeals), which was also rejected.

3. After hearing both the sides and on perusal of the records, it is seen that the Furnace Oil was used in the process of job work material as fuel. It is also seen that the respondents were engaged in the manufacture of dutiable goods - S.S. Patta/Patti. They were also engaged in the job work. Furnace oil was used as fuel in the manufacture of dutiable and job work materials. The Original Authority observed that Rule 6(2) of the Cenvat Credit Rules is applicable to all the inputs except inputs used as fuel. I find that the Larger Bench of the Tribunal in the case of M/s. Sterlite Industries (I) Ltd. Vs. CCE, Pune-I reported in 2005 (183) ELT 353 (Tribunal-Larger Bench) held that Modvat credit of the duty paid inputs used in the manufacture of final products without payment of duty for utilisation in the manufacture of final product by the Principal manufacturer would not hit Rule 57C of the erstwhile Central Excise Rules, 1944.

4. Ld. Advocate relied upon the decisions of the Hon'ble High Courts and the Tribunal as under:-

(a) Commissioner of Central Excise, Delhi Vs. Super Auto (I) Ltd. reported in 2008 (221) ELT 41 (P&H)

(b) Union of India Vs. Flex Chemicals Ltd. 2007 (216) ELT 359 (M.P.)

(c) Commissioner of Central Excise Vs. Modi Sales 2009 (235) ELT 356 (Tribunal-Delhi)

5. In the case of Super Auto (I) Ltd. (supra), it has been held that Modvat credit availed on furnace oil used in production of final product as well as for job work cleared without payment of duty and without reversing proportionate credit is justified as furnace oil was used as fuel. In the case of Flex Chemicals Ltd. (supra), the Hon'ble Madhya Pradesh High Court held that credit on inputs used as fuel is available if the same are also used in manufacture of non-dutiable or exempted products cleared under job work notification.

6. In view of the above decisions, I do not find any reason to interfere the order of the Commissioner (Appeals). Accordingly, the appeal filed by the Revenue is rejected. Cross objections is disposed of.

Order dictated & pronounced in open court on 3.6.2009.

(P.K. Das)
Member (Judicial)

Ckp.