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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/2020/2007 – SM[BR] Date 16/06/2009

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

To :
M/S UTTAM (BHARAT) ELECTRICALS (P) LTD.
B-189/A, ROAD NO. 9F, VKI AREA, JAIPUR,
RAJASTHAN

M/S UTTAM (BHARAT) ELECTRICALS (P) LTD. Appellant
Vs
C.C.E. JAIPUR I Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 572 / 2009 –SM[BR] dated 22.4.2009

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 I
N.G.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.
2. Adv. / Consult
MR.BIPIN GARG
B-1/1289,A-VASANT KUNJ, 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.2020 of 2007-SM (BR)

[Arising out of common Order-in-Appeal No.101(GRM)CE/JPR-I/2007 dated 12.04.2007 passed by the Commissioner of Central Excise (Appeals-I), Jaipur]

Date of Hearing/ Decision:22.04.09

For approval and signature:

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

3. 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

M/s. Uttam (Bharat) Electricals (P) Ltd. ....Appellants
[Rep. by Shri Bipin Garg, Advocate]

Vs.

CCE, Jaipur-I ...Respondent
[Rep. by Shri S. Gautam, DR]

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

Final Order No. 572/09-SM(BR)/Dated:22.04.2009

Per P.K. Das:

The relevant facts of the case, in brief, are that the appellants are engaged in the manufacture of Power Distribution Transformers, HV/LV

Coils classified under Heading 8504 of the Schedule to the Central Excise Tariff Act, 1985. They were also registered with the Service Tax Authority having Registration No.27/ST/MRS/JPR-II/2003 for providing services of "Maintenance & Repair Services", "Commissioning and Installation Service" and "Technical Testing Service". Show cause notice dated 10.02.2006 was issued proposing to disallow credit on input services availed during the period 1.7.2003 to 10.09.2004. The Original Authority confirmed the demand of tax of Rs.2,25,520/- for wrong utilisation of credit balance lying as on 10.09.2004 in Cenvat Account and Rs.20,501/- on irregular availment of credit and imposed penalty of equal amount along with interest. The Commissioner (Appeals) upheld the Adjudication Order.

2. Ld. Advocate on behalf of the appellant contested the demand of tax on merits as well as on limitation. He submits that it has been alleged in the show cause notice that the amount of Rs.2,25,520/- lying as on 10.09.2004 was wrongly utilised for payment of central excise duty instead of payment of service tax as provided under Rule 11 of Cenvat Credit Rules, 2004. He drew the attention of the Bench to the relevant portion of the show cause notice. The Commissioner (Appeals) upheld the Adjudication Order on the ground that by virtue of provisions of Rule 3 (1) of Service Tax Credit Rules, 2002, the appellant wrongly availed and utilised the credit. He submits that the show cause notice issued for

wrong utilisation of credit. His submission is that in terms of Rule 4 of Cenvat Credit Rules, 2004, there is no bar for utilisation of the credit on Central Excise Duty. Regarding the demand of tax of Rs.20,501/-, he submits that the demand of tax is barred by limitation. He is not challenging the demand of Rs.20,501.00.

3. Ld. DR reiterates the findings of the Commissioner (Appeals). He submits that Rule 3(1) of the Service Tax Credit Rules provides that the appellant is eligible to take credit on the input service falls in the same category of taxable service. He submits that they have not fulfilled the conditions of Rule 3(1) of the Rules and, therefore, utilisation of credit under Rule 4 is irregular. He further submits that they have not disclosed these facts to the Revenue and, therefore, the extended period of limitation would be invoked.

4. After hearing both the sides and on perusal of the records, it is seen from the show cause notice that the amount of Rs.2,25,520/- was lying unutilised in CENVAT account on 10.09.2004. In the month of March, 2005, they utilised the said amount towards payment of central excise duty. It has been alleged that as per Rule 11 of the Cenvat Credit Rules, 2004, the credit of service tax lying unutilised on 10.09.94 can be utilised for payment of service tax only and not for payment of central excise duty.

5. It is noted that by Notification NO.23/2004-CE (NT) dated 10.09.2004, Cenvat Credit Rules, 2004 was introduced in supersession of the CENVAT Credit Rules, 2002 and the Service Tax Credit Rules, 2002. Rule 11 of Cenvat Credit Rules, 2004 is transitional provision. Rule 11(1) of Cenvat Credit Rules, 2004 provides that any amount of credit earned by a manufacturer under the Cenvat Credit Rules, 2002, as they existed prior to the 10th day of September, 2004, or by a provider of output service under the Service Tax Credit Rules, 2002, as they existed prior to the 10th day of September, 2004, and remaining unutilised on that day shall be allowed as Cenvat Credit to such manufacturer or provider of output service under these rules, and be allowed to be utilised in accordance with these rules. Rule 3 (4) of Cenvat Credit Rules, 2004 provides Cenvat Credit may be utilised for payment of:

(a) any duty of excise on any final product;

(b) xxxxxxxx

(c) xxxxxxxx

(d) xxxxxxxx

(e) service tax on any output service.

6. So, it is clear that as per transitional provision under Rule 11 of the Rules, 2004, credit can be utilised in accordance with Rule 3 (4) of Cenvat Credit Rules, 2004 for payment of any duty of excise on any final product. Therefore, allegation made in the show cause notice is not

correct. The Commissioner (Appeals) held that the appellant has ignored the provisions of Rule 3(1) of the Service Tax Credit Rules, 2004 is erroneous Hence, the denial of credit on input-service to the amount of Rs.2,25,520/- is not sustainable. Ld. Advocate is not disputing the duty amounting to Rs.20,501/- and therefore, it is upheld. As the denial of credit of Rs.2,25,520/- is set aside and the issue involved is interpretation of provisions of law, the imposition of penalty is not warranted. Accordingly, penalties are set aside.

6. In view of the above discussion, the denial of credit of Rs.2,25,520/- and penalties are set aside and the denial of credit of Rs.20,501/- is upheld. The appeal is disposed of in the above terms with consequential reliefs.

Order dictated & pronounced in open court on 22.04.2009.

(P.K. Das)
Member (Judicial)

Ckp.