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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

Date 17/06/2009

Appeal No. E/725 /2007 – SM [BR]

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

To :
R.K INDUSTRIES
47/6 & 7, BHANPURI INDUSTRIAL AREA, NEAR
URKURA STATION, RAIPUR (C.G.)
493221

Appellant

R.K INDUSTRIES

Vs

Respondent

C.C.E RAIPUR

I am directed to transmit herewith a certified copy of **Final order No.** 577 / 2009 –SM[BR] dated 2.6.2009 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
   C.C.E RAIPUR
   DHAMTARI ROAD, TIKRAPARA, RAIPUR
   492001
2. Adv. / Consult
   MR.L.P. ASTHANA & MS REENA KHAIR
   R-163, SECOND FLOOR, GREATER KAILASH-1, NEW DELHI - 110 048.

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
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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

COURT – III

CENTRAL EXCISE APPEAL NO. 725 OF 2007-SM

[Arising out of Order-in-Appeal No. 194-CE/RPR/APPL I/2006 dated 28.11.2006 passed by the Commissioner (Appeals), Central Excise, Raipur]

For approval and signature:

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

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?	N
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. R.K. Industries — Appellant

Vs.

CCE, Raipur — Respondent

Appearance:

Smt. Reena Kher, Advocate for the appellants;
Shri R.K. Verma, D.R. for the Revenue

Coram:

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

Date of hearing/decision: 2nd June, 2009

FINAL ORDER NO. 577/09-SM(BR) **dated** 2.6.09

Per P.K. Das:

The relevant facts of the case, in brief, are that the appellants are engaged in the manufacture of Wires. On 1.4.2005 they opted for availing SSI Exemption benefit under notification No. 8/2003-CE dated 1.3.2003. They availed SSI Exemption benefit during the financial year 2005-06. However, in the month of January, 2006 they felt to opt out of SSI Exemption and, therefore, they deposited the entire amount of duty of Rs. 1,28,400/- on 12.1.2006 and 13.3.2006 in respect of clearances made during the financial year, 2005-06. A show cause notice dated 24.3.2006 was issued proposing the demand of Rs. 3,46,456/- equivalent to the Cenvat credit in respect of inputs lying in stock or in process or contained in final product on 1.4.2005. The original authority confirmed the demand and imposed penalty of Rs. 50,000/- along with interest. The Commissioner (Appeals) upheld the adjudication order.

2. Learned Advocate on behalf of the appellants submits that though they have opted for SSI Exemption on 1.4.2005, but, they opted out from SSI Exemption in 2006 and paid the entire amount of duty in question on 10.1.2006 and 13.3.2006. She submits that in view of opting out of SSI Exemption there is no reason of denial of credit on stock as on 1.4.2005. Her alternative submission is that if the demand of the duty is upheld the

amount deposited by the appellants on 10.1.2006 and 13.3.2006 is liable to be adjusted. She also submits that the appellant is a small unit and there is no intention to evade payment of duty and, therefore, penalty is not warranted.

3. Learned D.R. reiterates the findings of the Commissioner (Appeals). He submits that Rule 11(2) of Cenvat Credit Rules, 2004 provides that if a manufacturer who opts for exemption from the whole of the duty of excise leviable on goods manufactured by him under a notification based on the value or quantity of clearances in a financial year, and who has been taking CENVAT credit on inputs or input services before such option is exercised, shall be required to pay an amount equivalent to Cenvat credit, if any, lying in his credit, the balance, if any, still remaining shall lapse and shall not be allowed to be utilized for payment of duty on any excisable goods, whether cleared for home consumption or for export.

4. In the present case, there is no dispute that the appellants availed SSI exemption during the financial year 2005-06. On a query from the Bench, the learned Advocate submits that the appellants voluntarily deposited the duty on 10.1.2006 and 13.3.2006 in respect of clearances made during the entire financial year. Learned Advocate also points out that the appellants have not availed any further Cenvat credit. It is also submitted by the appellants that the payment was made on their own

without any permission from the department. So, in my view, the demand under Rule 11(2) of the Rules is justified.

5. In view of the above discussion, demand of duty is upheld. However, considering the facts and circumstances of the case and that the appellants is a small unit the amount of penalty is reduced to Rs.25,000/-. At this stage, learned Advocate submits that the amount deposited by the appellants may be allowed to adjust against the amount of demand. As such, the original authority is directed to adjust the deposit made by the appellants against the present demand in accordance with law. Appeal is disposed of in the above terms.

(Dictated & pronounced in the Open Court.)

(P.K. DAS)
MEMBER (JUDICIAL)

RK