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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/1449/2007 – SM[BR]   Date 23/06/2009

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

To :
M/S MOSER BAER INDIA LTD
43-B, OKHLA INDUSTRIAL ESTATE, NEW DELHI-
110020
M/S MOSER BAER INDIA LTD   Appellant
Vs
C.C.E. NOIDA   Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 610 / 2009 -SM[BR] dated 16.6.2009 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. NOIDA
   C-56/42, SECTOR-62, NOIDA-201307
2. Adv. / Consult
   MR.J M SHARMA
   G-31, BASANT ENCLAVE, 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)
16. Office Copy
17. Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. III

Excise Appeal No. 1449 of 2007-SM

[Arising out of Order-in-Appeal No.29/CE/APPL/NOIDA/2007 dated 30.3.2007 passed by Commissioner (Appeals) Customs & Central Excise, Meerut II]

For approval and signature:

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

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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 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

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M/s. Moser Baer India Ltd. Appellant

Vs.

Commissioner of Central Excise & Customs, Noida Respondent

Appearance:

Mr. J.M. Sharma, Consultant with Shri Roop Singh, Advocate for the Appellant
Mr. R.K. Verma, DR for the Respondent

CORAM:

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

Date of Hearing : 30.4.2009
Date of Decision: 16.6.2009

Final **ORAL ORDER NO. 610/09-SM (BR)**

Per P.K.Das:

The relevant facts of the case as per the record, in brief, are that the appellants are engaged in the manufacture of recorded audio cassettes and blank audio cassettes classifiable under sub heading No. 85243290 and 85231290 of the schedule to the Central Excise Tariff Act, 1985. It appears from the ER-I return for the month of February, 2005 that the appellant removed capital goods to their new unit on reversal of credit on the depreciated value. By a show cause notice dated 9.11.05 the appellant was directed to pay the differential duty of Rs.6,15,466/- basic Excise duty and Rs.12,309/- education cess as they have contravened Rule 3 (5) of Cenvat Credit Rules and to impose penalty. It has been alleged that they have availed credit of Rs. 7,68,331/- on the capital goods and at the time of clearing to their new unit and paid the duty of Rs.1,52,865.00 on depreciated value. The original authority confirmed the demand of duty and imposed penalty of Rs.2 lakhs along with interest. Commissioner (Appeals) upheld the adjudication order. Hence the appellant filed this appeal.

2. The learned advocate on behalf of the appellant submits that the appellant received the capital goods in their factory prior to 1.4.01 and used

in the manufacture of finished goods. He submits that the appellants closed down their manufacturing operations and shifted to another new unit and removed capital goods on payment of duty on the depreciated value. He submits that they have not sold the goods and it is a mere transfer to their new unit where the capital goods were used for manufacture of finished goods. He submits that it is a transfer of capital goods inter-unit and the effect is revenue neutral. He relied upon the decision of the Hon'ble Supreme Court in the case of Commissioner of Central Excise vs. Textile Corpn. Marathwada Ltd. reported as [2008 (231) ELT 195 (SC). He also relied upon the decision of the Tribunal as under:-

1) Hindustan Zinc Ltd. vs. Commissioner of Central Excise, Jaipur II [2008 (232) ELT 687 (Tri-Del)]

2) New Chemi Industries Ltd. vs. CCE, Daman [2008 (230) ELT 505 (Tri-Ahmd)].

3. Learned DR on behalf of the revenue reiterates the finding of the Commissioner (Appeals). He submits that the Larger Bench of the Tribunal in the case of Modernova Plastyles Pvt. Ltd. vs. CCE, Raigad reported as [2008 (232) ELT 29 (Tri-LB)] held that the capital goods removed as such includes used and old capital goods. He further submits that Rule 3(5) provides removal of capital goods as such from the factory, the manufacturer of final products shall pay the equal amount of credit availed in respect of such capital goods. He also submits that in this case the appellant cleared the goods on depreciated value. There is no provision for reversal of credit on depreciated value during the relevant period.

4. After hearing from both sides and on perusal of record, it appears that the appellant availed the credit on capital goods prior to 1.4.01 and used in the manufacture of finished goods during the relevant period. Thereafter they removed the capital goods to their new unit for use in the manufacture of finished goods as their old unit is closed down. Thus it is a case of transfer of capital goods inter-unit. Therefore, the case may be decided on the issue of revenue neutrality. The Hon'ble Supreme Court in the case of Textile Corpn. Marathwada Ltd. (supra) held that admittedly, the assessee has paid the duty at the final stage and if the assessee has to pay the excise duty on each and every stage of manufacturing, it would be entitled to modvat credit and the whole exercise would be revenue neutral. The Tribunal in the case of Hindustan Zinc Ltd. (supra) held as under:

> "**4.** We, after hearing both sides, find that the appeal can be disposed of on the point of revenue neutrality. Admittedly, the duty paid by the appellant was being availed as Modvat credit, which the other unit was in a position to utilize. The Tribunal in the case of *PTC Industries Ltd.* v. *C.C.E., Jaipur-I* - 2003 (159) ELT 1046 (Tri-Del.) has held that whatever duty is paid by one unit on sale of goods to the assessee's another unit is being available as credit to the other unit, there was no warrant for demanding duty. In the present case, we find that the zinc concentrate was only being transferred to the appellant's own unit and was not being sold at all. Whatever duty was being paid by the appellant was available as credit to them and nothing would go into the Revenue's pocket. The entire excise is revenue neutral as neither the assessee stands to loose anything by paying higher duty nor the Revenue stands to gain anything by the appellant's adoption of lower assessable value. As such, we are of the view that demand is

unwarranted and unsustainable on this count alone. We, accordingly, set aside the impugned order and allow the appeal with consequential relief to the appellant."

5. In the present case, the appellant removed the capital goods to their new unit, where it was used in the manufacture of dutiable final product. Therefore, the appellant is eligible to avail the credit which is demanded in the present case. The entire exercise is revenue neutral and is futile. Therefore, the demand of duty and penalty are not warranted on the ground of revenue neutrality.

6. In view of the above discussion, the impugned order is set aside. The appeal filed by the appellant is allowed with consequential relief.

(Order Pronounced in the open court on 16/6/09.)

(P.K.Das)
Member(Judicial)

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