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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. ST/721 /2008 – SM[BR] Date 08/07/2009

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

To :
M/S PUNJAB STEELS ,

AMLOH ROAD, MANDIGOBINDGARH.

M/S PUNJAB STEELS , Appellant

Vs

C.C.E. CHANDIGARH Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 666 / 2009 –SM[BR] dated 25.6.2009

passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent

C.C.E. CHANDIGARH

C.R. BUILDING, PLOT NO. 19, SECTOR 17-C, CHANDIGARH 160017
2. Adv. / Consult
SHRI BIPIN GARG ADV.
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
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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 – 110 066.
Principal Bench, New Delhi

COURT NO. IV
Service Tax Appeal No. 721 of 2008 (SM)

[Arising out of the Order-in-Appeal No. 409/CE/CHD/2008 dated 07/08/2008 passed by The Commissioner of Central Excise (Appeals), Chandigarh.]

For Approval and signature :
Hon'ble Shri Rakesh Kumar, Member (Technical)

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? :

3. Whether their Lordships wish to see the fair copy of the order? :

4. Whether order is to be circulated to the Department Authorities? :

M/s Punjab Steels — Appellant

Versus

CCE, Chandigarh — Respondent

Appearance

Shri Atul Gupta, C.S. – for the appellant.

Shri R.K. Verma, Authorized Representative (DR) – for the Respondent.

CORAM : **Hon'ble Shri Rakesh Kumar, Member (Technical)**

DATE OF HEARING : 25/06/2009.

Final Order No. 666/2009 SM (BR) Dated : ____________

Per. Rakesh Kumar :-

The facts giving rise to this appeal are in brief as under:-

The appellant are engaged in the manufacture of non-alloy steel ingots etc. falling under Chapter Heading No.7206.90 of the Schedule to the Central Excise Tariff Act, 1985. They avail the credit of the inputs, capital goods and inputs services under Cenvat Credit Rules, 2004 and utilized the same for payment of duty on finished products. The appellant removed certain inputs in respect of which Cenvat credit had been taken, as such and in accordance with the provisions of Rule 3 (5) of Cenvat Credit Rules, 2004, reversed only the Cenvat credit of the Excise Duty. The Department pointed out that they should have also reversed the credit of service tax on GTA service used for transportation of those inputs whom Cenvat credit had also been taken. It is on this ground that Cenvat credit amounting to Rs. 2,75,684/- was demanded from the appellant alongwith interest and penalty was also proposed on them under Section 11AC. The Assistant Commissioner vide order-in-original dated 19/12/07 confirmed the Cenvat credit demand of Rs. 2,75,684/- alongwith interest and imposed penalty of equal amount on the appellant. It is against this order that the present appeal had been filed.

2. Heard both the sides.

2.1 Shri Atul Gupta, Company Secretary, the learned Counsel for the appellant pleaded that the provisions of Rule 3 (5) of the Cenvat Credit Rules provide that when the inputs or capital goods, on which the Cenvat credit has been taken, are removed as such from the factory of the manufacturer of final product, the manufacturer shall pay an amount equal to the credit availed in respect of such inputs or capital goods, and that from provision of Rule 3 (5) it is clear that the only the reversal of Cenvat credit availed in respect of inputs or capital goods is required, and not of the input services. The appellant relied upon the judgment of the Tribunal in the case of **Chitrakoot Steel & Power Pvt. Ltd. vs. CCE, Chennai** reported in **2008 (10) S.T.R. 118 (Tri. – Chennai)** wherein the Tribunal has taken the same view holding that when Cenvat availed inputs or capital goods are removed from assessee's factory, sub-rule 3 (5) provides for recovery of equal amount of credit availed in respect of such capital goods or inputs and there is no provision to reverse the credit of service tax credit availed in relation to inputs or capital goods. In view of this, he pleaded that the impugned order is not correct.

2.2 Shri R.K. Verma, the learned Departmental Representative defending the impugned order pleaded that what the Rule 3 (5) provides is that on removal of the Cenvated inputs or capital goods as such, the credit availed inputs or capital goods availed in is to be reversed and the expression – "credit in respect of such inputs" would include even the service tax credit, that as per Rule 3 (1) of the Cenvat Credit Rules, the scope of the terms "Cenvat credit" covers not only the credit duty on inputs or capital goods but also the credit of service tax in respect of input services and that in view of this, the service tax credit has been rightly demanded from the appellant and its demand has been rightly confirmed.

3. I have carefully considered the submissions from both the sides and perused the records. The appellant had received certain inputs and for transporting those inputs to the factory, had availed GTA service in respect of which service tax paid was Rs. 2,75,684/- and the credit of this service tax on GTA service had also been taken. Subsequently when the appellant removed those ~~goods~~ inputs as such, he reversed only the credit of excise duty paid on the inputs. The Department's contention is that on the removal of the goods as such, in addition to the credit of Central Excise Duty, the GTA service tax credit availed in respect of those inputs should also have been reversed. I find that on this very issue, the Tribunal in the case of Chitrakoot Steel & Power Pvt. Ltd. vs. CCE, Chennai (supra) has held that when the Cenvat availed inputs or capital goods are removed from the factory of the assessee as such, sub-rule 3 (5) provides for recovery of the amount of the Cenvat credit availed in respect of such inputs or capital goods and there is no provision to reverse the credit of service

tax availed in respect of such goods or capital goods. Following the judgment of the Tribunal, I hold that the impugned order is not sustainable. The same is set aside. The appeal is allowed.

(Dictated and pronounced in open court)

(Rakesh Kumar)
Member (Technical)

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