96

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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/1974/2007, 2001 – 2002 / 2007 –SM[BR] Date 07/08/2009

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

To :
C.C.E. RAIPUR
CENTRAL EXCISE BUILDING, DHAMTARI ROAD,
TIKRAPARA, RAIPUR 492001.

C.C.E. RAIPUR — Appellant
Vs
M/S KISHAN STEEL ROLLING MILLS — Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 888 - 890 / 2009 –SM[BR] dated 25.5.2009 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   1. M/S KISHAN STEEL ROLLING MILLS
   2. M/S KISHAN STEEL ROLLING MILLS
   3. M/S SHREE RAM STEELS

   PLOT NO. 569 &555/B, URLA INDL. ESTATE, RAIPUR, C.G.
2. Adv. / Consult
   SHRI RANJEET KUMAR THAKUR, ACCONTANT
   M/S RESPONDENTS;------------------------------------
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 NEW DELHI

Excise Appeals Nos.1974, 2001-2002 of 2007-SM

[Arising out of Order-in-Appeal No.58/RPR-I/2007 dated 12.03.2007, Order-in-Appeal No.56/RPR-I/2007 dated 12.03.2007 and Order-in-Appeal No.59/RPR-I/2007 dated 12.03.2007 passed by the Commissioner of Central Excise (Appeals-I), Raipur (C.G.)]

Date of Hearing/ Decision:25.05.09

For approval and signature:

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

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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

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CCE, Raipur ...Appellants

[Rep. by Shri Sansar Chand, DR]

Vs.

(1)M/s. Kisan Steel Rolling Mills & Ors.
(2)M/s. Kishan Steel Rolling Mills
(3)Shree Ram Steels ...Respondents
[Rep. by Shri Ranjeet Kumar Thakur, Accountant of Respondent]

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

Final Order No. 888-890/2009 SM (Br)/Dated:25.05.2009

<u>Per P.K. Das:</u>

Common issue is involved in these appeals and, therefore, all are being taken up together for disposal.

2. The relevant facts of the case, in brief, are that the respondents are engaged in the manufacture of Hot Rolled Products of Iron and Steel classifiable under Chapter Heading No.72 of the Schedule to the Central Excise Tariff Act, 1985. In the month of April, 1996, the respondents removed the goods at full rate of duty on some consignments and, thereafter, they availed concessional rate of duty in terms of SSI exemption Notification No.1/93-CE dated 1.3.96. Show cause notices were issued proposing to deny the concessional rate of duty. The Original Authority confirmed the demand of duty. The respondents debited the duty partly from their PLA and Cenvat Account under protest on 31.07.97 and filed appeals. Commissioner (Appeals) allowed the appeals filed by the respondents.

3. The respondents filed refund claim. The Original Authority allowed refund of the duty debited from PLA and Cenvat Accounts. The respondents took credit in Cenvat Account in the month of October, 2003, which was debited on 31.07.1997 under protest. During post audit, it was noticed that the respondents are not eligible for refund of Cenvat Credit debited from their Cenvat account on 31.07.97. Hence, show cause notices were issued in the month of September, 2004 proposing recovery of Cenvat Credit erroneously allowed to them, which they have taken credit in their Cenvat Account in the month of October, 2003, liable to be recovered under Section 11 A of the Central Excise Act, 1944 along with interest as per provisions of Section 11 AB of the Central Excise Act, 1944. The Original Authority dropped the proceedings of the show cause

notices. Revenue filed appeals before the Commissioner (Appeals), which were rejected. Hence, Revenue filed these appeals before the Tribunal.

4. After hearing both the sides and on perusal of the records, I find that the respondents paid the amount in question from Cenvat account on 31.07.1997. They started paying duty from 1.8.1997 under compounded levy scheme under Section 3 A of the Central Excise Act, 1944. In terms of sub-rule (17)of Rule 57F of the erstwhile Central Excise Rules, 1944, any credit lying unutilised on 1.8.1997, with the manufacturer of the Hot re-rolled products of non-alloy steel falling under heading nos.7211, 7213, 7214 and 7215 of the Schedule to the Central Excise Tariff Act, and who is required to pay duty under Section 3A of the Central Excise Act, 1944, shall lapse and shall not be allowed to be utilised for payment of duty on any excisable goods, whether cleared for home consumption or for export. Therefore, the unutilised credit balance on 31.07.1997 would be treated as lapse and, the assessee shall not be permitted to utilise the credit for payment of duty for any excisable goods.

5. In the present case, the respondents utilised the Cenvat credit balance on 31.07.97 for payment of pending dues. On a query from the Bench, the ld. Representative of the respondents fairly submits that on 31.7.97, PLA balance was nil. Therefore, the amount they have paid from Cenvat Account on 31.07.97, if not utilised for the pending dues, it would be treated as lapse under Rule 57F(17) of the erstwhile Rules. In this context, the refund of the said credit to the respondents, would indirectly

refund of lapsed credit, which is contrary to Rule 57F (17) of the erstwhile Rules.

6. Further, it is observed by the Commissioner (Appeals) that as per the earlier Order of the Commissioner (Appeals), the respondents were not liable to pay duty. The effect is that the respondents were not liable to debit the amount on 31.07.97 from their Cenvat Account. Then, the amount lying un-utilised would be lapsed in view of the Rule 57F(17) of the erstwhile Central Excise Rules. The respondents are not entitled to get the refund of the amount debited on 31.7.1997 against pending dues.

7. Both the authorities below proceeded on the basis that the Revenue has not filed any appeal against the earlier Order-in-Appeal. It has also been observed that the Department should have issued fresh show cause notices within six months from the date of debit entry i.e. 31.07.97 and not at the refund claim stage.

8. I am unable to accept the findings of the lower authorities. In the earlier order, the Commissioner (Appeals) decided the demand of duty on denial of concessional rate of duty, which has no relevancy with the present refund claim. The respondents voluntarily debited the amount on 31.7.1997 from Cenvat account against pending dues. There is no reason to raise the demand of the amount within 6 months from that date by the department. The amount lying in their Cenvat Account on 31.07.97, if not debited against pending dues, could have been lapsed in view of the Rule 57F (17) of the Rules, which they are not entitled to take credit in their Cenvat Account in October, 2003.

13

9. In view of the above discussions, I find that the proposal in the show cause notices with regard to refund of Cenvat Credit erroneously allowed by way of re-credit in their Cenvat account in the month of October, 2003 liable to be recovered along with interest are justified. Accordingly, the impugned orders are set aside and the demand of duty as proposed in the show cause notices along with interest are confirmed. All the appeals filed by the Revenue are allowed.

Order dictated & pronounced in open court on 25.05.2009.

(P.K. Das)
Member (Judicial)

Ckp.

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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 :04/02/2011

MISC Order No. 18 – 19 & 19-A / 2011 –SM[BR]

Application E / ROM / 61 - 63 / 2009 –SM[BR] IN

Appeal No. E/1974 / 2007, 2001 – 2002 / 2007 –SM[BR]

1. Appellant

C.C.E. RAIPUR
CENTRAL EXCISE BUILDING, DHAMTARI
ROAD, TIKRAPARA, RAIPUR 492001.

2. Respondent

1. M/S KISHAN STEEL ROLLING MILLS
2. M/S KISHAN STEEL ROLLING MILLS
3. M/S KISHAN STEEL ROLLING MILLS

PLOT NO. 569 &555/B, URLA INDL. ESTATE,
RAIPUR, C.G.

3. Adv / Consult :

NONE:------------------

4. C.D.R
5. Bar Association, CESTAT, New Delhi.
6. Director Publications, Customs, Excise. I.P. Estate, New Delhi
7. M/s Centax Publications Pvt Ltd., 1512-B, Bhishm Pitamah Marg, Opp. ICICI Bank of Defence Colony, New Delhi - 110003
8. Company Law Institute of India Pvt Ltd, No.2 (OLD No.36),Vaithyaram Street, T. Nagar, Chennai 600017
9. Deeparchie Publications, M-93, Marg. 43, Saket, New Delhi - 110017.
10. Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi -110005
11. Easy Service Tax Online Dot Com Pvt. Ltd. 407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad - 15
12. LAWCRUX Advisors (P) Ltd, Law House,1-8,Sector - 10, Faridabad 121003 (Haryana)
13. TaxIndiaOnline.com Pvt Ltd, Unit No. 1, 2nd Floor, Vasant Arcade Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard File

Assistant Registrar
(SM 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. III
Excise ROM Applications No. 61-62 of 2009 in Appeals No. 1974 and 2001 of 2007 (SM)

CCE, Raipur — Appellant

Versus

M/s Kishan Steel Rolling Mill — Respondent

Excise ROM Application No. 63 of 2009 in Appeal No. 2002 of 2007 (SM)

CCE, Raipur — Appellant

Versus

M/s Shree Ram Steels — Respondent

Appearance

Shri Anil Khanna, Authorized Representative (SDR) – for the appellant.

None – for the respondent.

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

DATE OF HEARING : 20/01/2011.

Misc Order No. 18 - 19 / 2011 SM (BR) & 19-A / 2011 SM (BR) Dated : ____________

Per. Rakesh Kumar :-

These are the applications for rectification of mistake apparent from record, filed in respect of final order No. 888-890/2009 – SM (BR) dated 25th May 2009. By this order, the Tribunal had allowed the Revenue's appeals. Though the notice for hearing of the application had been sent to the respondent well in time, today nobody appeared, the respondent, however, had earlier given written submissions dated 27th March 2010. I find that earlier also when these applications had been listed for hearing none representing the applicant had appeared. In view of this, these applications for rectification of mistake are being decided ex-parte on the basis of their written submissions.

2. Heard Shri Anil Khanna, learned Departmental Representative, who pleaded that in the applications for rectification of mistake no mistake in the order apparent from the records had been pointed out and that the ROM applications are drafted more like appeal, and hence, the same are not maintainable.

3. I have carefully considered the submissions of the learned DR and written submissions of the respondent and have also perused the records. I find that the ROM applications are drafted like appeals and as such no mistake apparent from record in the final order passed by the Tribunal, has been pointed out. What Section 35 (c) (2) of the Central Excise Act, 1944 permits it a rectification of mistake apparent from records, but this cannot take the form of review of the order. On going through the applications of the respondent, I find that what they seek is the review of the final order passed by the Tribunal, which is not permissible. In view of this, the ROM applications are not maintainable. The same are dismissed.

(Dictated and pronounced in open court.)

(Rakesh Kumar)
Member (Technical)

PK