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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 11/08/2009

Appeal No. E/803 /2009 – SM[BR] E/ STAY / 794 / 2009 –SM[BR]

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

To :
M/S IDEAL COMPONENTS (P) LTD
178,SECTOR III, IMT, MANESAR, DISTT- GURGAON(HR)

M/S IDEAL COMPONENTS (P) LTD — Appellant
Vs
C.C.E. DELHI I — Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 903 / 2009 –SM[BR]&S/412/2009dated 29.7.2009 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. DELHI I
   C.R. BUILDING, I.P. ESTATE, NEW DELHI 110002
2. Adv. / Consult
   MR.T R RUSTAGI,ADVOCATE
   SD-84, TOWER APARTMENTS, PITAMPURA, DELHI -34
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)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-IV

Date of hearing/decision: 29.7.2009

Stay Application No.794 of 2009 and Central Excise Appeal No.803 of 2009-SM

Arising out of the order in appeal No.280/ANS/GGN/08 dated 11.12.08 passed by the Commissioner (Appeals), Central Excise, Delhi III.

Hon'ble Shri M. Veeraiyan, Member (Technical)

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	Yes
2	Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3	Whether their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

M/s Ideal Components (P) Ltd. .... Appellants

Vs.

C.C.E.,Delhi III .... Respondent

Appearance:

Shri T.R. Rustogi, Advocate for the appellants
Shri S.N. Srivastava, Authorized Departmental Representative (SDR) for the Revenue

Coram: Hon'ble Mr. M. Veeraiyan, Member (Technical)

Oral Order No. 903/2009 SM (BR)
S- 412/2009 SM(BR)

Per M. Veeraiyan:

After hearing both sides for a while on the stay petition, I deem it appropriate to dispose of the appeal finally and accordingly, I waive pre-deposit of the dues as per the impugned order and proceed to dispose of the appeal finally.

2. The appellants have units in Gurgaon and Manesar. In the Gurgaon factory, they received certain capital goods and took Cenvat credit

amounting to Rs.1,74,169/- and after using the same for a few years, they removed the capital goods to the factory at Manesar for manufacture of identical products from the said factory. They reversed the credit amounting to Rs.1,20,107/-.The original authority held that the appellants should have reversed the entire amount of Rs.1,74,169/- which was initially taken by them and therefore, confirmed the demand of differential duty amounting to Rs.54,062/- along with interest and also imposed equal amount as penalty. The order was upheld by the Commissioner (Appeals).

3. Learned Advocate for the appellants submits that the manufacturers in respect of Gurgaon factory and Manesar factory are one and the same being the same legal entity. The capital goods imported by the manufacturer stand used for the intended purpose. The Gurgaon factory, at the time of removal of capital goods adopted the depreciated value and reversed credit to the tune of Rs.1,20,107/-. Even if they were required to pay the amount of Rs.1,74,159/-, the entire amount was available as credit to the manufacturing unit at Manesar. He relies on the decision of the Tribunal in the case of Pooja Forge Ltd. v. C.C.E., Faridabad - 2007 (8) STR 318 (Tri-Del.) wherein it has held that the movement of capital goods from one unit to another unit of the company for use in the manufacture of same final products does not involve any disposal or alienation of capital goods. He , therefore, submits that the entire excise is revenue neutral, the question of demand of differential duty and imposition of penalty are not warranted.

4. Learned SDR submits that the term removal "as such" has been interpreted by the Larger Bench of the Tribunal in the case of Modernova Plastyles Pvt. Ltd. vs. C.C.E., Raigad - 2008 (232) ELT 29 (Tri-LB) wherein it has been held that reversal of credit in respect of the capital goods which are removed is a must whether the same are removed after use or ~~utilised~~ without use. Learned SDR also submits that adoption of depreciated value for the purpose of reversal of credit of capital goods removed is permissible only with effect from 13.11.2007 after amendment of Rule 3(5) of the Cenvat Credit Rules.

5. I have carefully considered the submissions from both sides. The amendment dated 13.11.2007 covers cases of removal of capital goods after use not only between the units of the same company but between any two companies. In the present case, I am dealing with the situation of inter unit transfer within the same company . The manufacturer in respect of both the units is the same legal entity. The submission of the learned Advocate that even if the entire credit of Rs.1,74,169/- was reversed , the same amount is available immediately on receipt of the capital goods in other unit merits consideration. The present case is squarely covered by the decision of the Tribunal in the case of Pooja Forge Ltd. cited supra. The decision of the Larger Bench has held that capital goods removed as such or after use is liable to reverse the credit. There is no dispute that in this case , the credit has been reversed . The issue involved is the quantum of credit. Here, taking note of the fact that it is a case of inter unit transfer adopting the depreciated value (which is normal accounting method whether the goods are removed to another unit or not), I do not find any justification for confirmation of the demand and imposition of penalty.

6. The appeal is allowed with consequential relief. Stay petition is also disposed of.

(M. Veeraiyan)
Member (Technical)

scd/