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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/1985/2007 – SM[BR] Date 24/08/2009

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

To :
M/S KEI INDS. LTD.
SP-920, RIICO INDL. AREA, BHIWADI, RAJASTHAN

M/S KEI INDS. LTD. Appellant

Vs

C.C.E. JAIPUR I Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1059 / 2009 –SM[BR] dated 31.7.2009 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. JAIPUR I
   N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.
2. Adv. / Consult
   MR.BIPIN GARG
   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
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-110066

COURT-IV

Date of hearing/decision:31.7 .2009

Central Excise Appeal No.1985 of 2007-SM

Arising out of the order in appeal No. 96(GRM)CE/JPR-I/2007 dated 30.3.2007 passed by the Commissioner, (Appeals I), Central Excise, Jaipur .

For Approval and Signature:

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 KEI Industries Ltd. .... Appellants

Vs.

C.C.E., Bhiwadi ..... Respondent

Appearance:

Shri Atul Guptal Company Secretary for the appellant(s) and
Shri Ishkitkhar Baig, Authorized Departmental Representative (SDR) for the Revenue

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

Oral Order No. 1059 / 2009 SM(Br)

Per M. Veeraiyan:

These appeals are against the order of the Commissioner (Appeals) No..96(GRM)CE/JPR-I/2007 dated 30.3.2007.

2. Heard both sides

3. The relevant facts, in brief, are that the appellants were manufacturer of stainless wire and received certain capital goods during the period 12.5.96 to 2.9.96 and taken Cenvat credit amounting to Rs.1,78,076/-. In respect of some of the consignments ,they have not filed declarations and in respect of some consignments, they have filed declarations but allegedly beyond the normal period of three months. On this ground the credit stands denied by the original authority which order has been upheld . A penalty of Rs.5000/- also stands upheld against the appellant.

4. Learned Company Secretary submits that the capital goods were received which were lying in the factory for some period awaiting installation. Since the capital goods were received shortly after introduction of credit on capital goods, the appellants were not knowing the procedure. However, they filed intimation before taking the credit though not within three months from the date of receipt of the goods. In some cases, the original authority has wrongly noted that intimation has been given after three months whereas the intimation has been given within three months. He draws my attention to the Notification No.7/99-CE (NT) dated 9.2.99 inserting sub-rule (11) in Rle 57G and sub-rule (13) in Rule 57T envisaging "Cenvat credit benefit should not be denied even for non-filing of declaration". He submits that Board vide Circular No.441/7/99-CX, dated 23.2.99 advised the field formations against the

issue of show cause notice for denial of credit on procedural ground and also to dispose of pending cases in the light of the guidelines contained therein.

5. Learned SDR reiterates the finding of and reasoning of the Commissioner (Appeals).

6. I have carefully considered the submissions from both sides. At the outset, it is noticed that the original authority has listed out the disputed godos in his order which is extracted below:

S. No.	Name of the capital goods	Tariff sub-heading	Date of receipt of capital goods in the factory	Date of filing declaration	Remarks
1.	Dead Block Coller	8479.90	1.7.96/ 23.5.96	17.10.96	Declaration filed after three months of the receipt of the goods
2.	Electric Motor	8479.90	10.6.96/ 5.8.96	17.10.96	
3.	Non-electric furnace	8417.90	4.7.96	17.10.96	
4.	Non-electric furnace spares	8417.90	8.7.96	17.10.96	
5.	Parts of wire drawing machines	8479.90	11.7.96	17.10.96	Declaration filed after three months of the receipt of the goods
6.	Electric weighing scale	8423.00	5.8.96	7.10.96	
7.	Wire but welding machines	8515.00	5.8.96	7.10.96	
8.	Gear Box	8483.00	12.5.96	-	Not declared
9.	Hydraulic Pallet Truck	84.26	2.9.96/ 4.8.96	-	Note declared
10.	Natural Diamond dies	8479.10	24.7.96	-	Not declared

7.1 It is clearly noted that no declaration has been filed in respect of goods in Sl. No.8, 9 & 10. This has not been disputed by the learned Company Secretary. Under these circumstances, the question of allowing credit in respect of these three items is ruled out and therefore, the decision of the lower authorities in respect of three items are upheld.

7.2 In respect of serial Nos.6 and 7, the date of receipt of capital goods are 5.8.96 and the declarations have been filed on 7.10.96 and therefore, as per the records, the declarations have been filed within three months. The credit on these two items deserves to be allowed as the same is within three months.

7.3 As regards the serial No.2, it appears that part of the goods are received on 5.8.96 and the declaration has been filed on 17.10.96 and therefore, as per record the declaration has been filed within the period of three months. The credit on these items also deserves to be allowed.

8. In respect of items mentioned at serial Nos.3, 4, 5 and part of the goods in Sl. No. 2 the declarations have been filed after three months. It is to be noted that dispute relates to the capital goods. In the case of inputs, the same might have been consumed within short period, but the capital goods are available for verification for the period. The purpose of declaration is to enable the Excise authorities to verify the genuineness of the claim that the goods have been received and utilized "for intended purpose". This aspect is easier to verify in respect of capital goods when compared to the inputs. It is brought to my notice by the Company Secretary that in rely to the show cause notice itself, they have made submissions that there is no dispute relating to the receipt of capital goods and its duty paid nature. Further , after issue of Notification dated 9.2.99, the Board has issued instructions not to issue show cause notice for recovery of modvat credit on procedural lapse and also to dispose of pending cases. The purpose of said guidelines , in my opinion is that the

Excise authorities should satisfy whether the goods have been used or for intended to be used as contemplated in the Modvat Rules. In this case, it is not being disputed that the said capital goods have been received and used in the factory of the appellants . Therefore, in respect of the goods mentioned in serial Nos.1, 2, 3, 4 and 5 in spite of some delay in filing declarations, Modvat credit should not be denied.

9. Appeal is partly allowed by allowing credit on all items except in respect of items mentioned in serial Nos. 8, 9 and 10. Since the modvat credit is being allowed for most of the items and it is the over all facts and circumstances of the case, penalty deserves to be set aside.

10. The appeal is disposed of on the above terms.

(M. Veeraiyan)
Member (Technical)

scd