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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/2549/2007 – SM[BR]   Date 08/09/2009

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

To :
M/S RSWM LTD.

GULABPURA, BILWARA

M/S RSWM LTD.   Appellant

Vs

C.C.E. JAIPUR II   Respondent

I am directed to transmit herewith a certified copy of **Final order No. 1130 / 2009 – SM[BR]** dated 19.8.2009

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 II

N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.

2. Adv. / Consult

MR.V. LAXMIKUMARAN

B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029

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)
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Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
NEW DELHI, PRINCIPAL BENCH NEW DELHI

Excise Appeal No.2549 of 2007-SM (BR)

[Arising out of Order-in-Appeal No.431(HKS)/CE/JPR-II/07 dated 28.06.2007 passed by the Commissioner of Central Excise (Appeals), Jaipur]

Date of Hearing/ Decision:19.08.2009

For approval and signature:

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

1. 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? :
3. Whether Their Lordships wish to see the fair copy of the Order? :
4. Whether Order is to be circulated to the Departmental authorities? : Y-N

M/s.RSWM Limited ...Appellants
(Rep. by Shri Ravi Raghavan, Advocate)

Vs.

CCE, Jaipur-II ....Respondents
(Rep. by Shri Iskitkhar Baig, SDR)

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

Final Order No..1130/2009 SM(BR)/Dated:19.08.2009

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

After hearing both the sides and on perusal of the records, I find that the issue involved in this case is the recovery of Cenvat credit paid on outward transportation of the finished goods on FOR basis from the factory to the port.

2. Ld. Advocate submits that the Larger Bench of the Tribunal in the case of ABB Ltd. and Others vs. Commissioner of Central Excise, Bangalore reported in 2009-TIOL-830 –CESTAT-BANG-LB held in favour of the assessee. He also submits that the Commissioner (Appeals) passed the order following the decision of the Tribunal in the case of Gujarat Ambuja Cements Ltd., which was overruled by the Hon'ble Punjab & Haryana High Court as reported in 2009 (14) STR 3 (P&H).

3. Ld. DR reiterates the findings of the Commissioner (Appeals).

4. I find that the Larger Bench of the Tribunal decided the issue in favour of the assessee as under:-

> "24. In the light of the discussion, we hold that the definition of input-services has to be interpreted in the light of the requirements of business and it cannot be read restrictively so as to confine only upto the factory or upto the depot of manufacturers.
> 25. In the result, we answer the reference by holding that the services availed by a manufacturer for outward transportation of final products from the place of removal should be treated as an input service in terms of Rule 2(1)(ii) of the CENVAT Credit Rules, 2004 and thereby enabling the manufacturer to take credit of the service tax paid on the value of such services."

5. In view of the above, the impugned order is set aside. The appeal is allowed with consequential relief.

Order dictated & pronounced in open court on 19.08.2009.

(P.K. Das)
Member (Judicial)

Ckp.