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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 08/09/2009

Appeal No. E/2531/2007 – SM[BR]

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

To :
M/S RELIABLE SAFETY GLASS LTD.
F-9, SURAJPUR INDUSTRIAL AREA-B, GREATER
NOIDA (UP)
M/S RELIABLE SAFETY GLASS LTD. Appellant
Vs
Respondent
C.C.E. NOIDA

I am directed to transmit herewith a certified copy of **Final order No. 1132 / 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. NOIDA
   C-56/42, SECTOR-62, NOIDA-201307
2. Adv. / Consult
   MR.M.P. SINGH
   110,SAMAJ KALYAN APARTMENT F-BLOCK,VIKASPURI,N.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)

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

Excise Appeal No.2531 of 2007-SM (BR)

[Arising out of Order-in-Appeal No.46/CE/APPL/NOIDA/07 dated 30.04.2007 passed by the Commissioner of Central Excise (Appeals), Noida (U.P.)]

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.		NA
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?	:	Yes

M/s. Reliable Safety Glass Ltd. .....Appellants
(Rep. by Shri M.P. Singh, Advocate)

Vs.

CCE, Noida ....Respondents
(Rep. by Shri S.N. Srivastava, SDR)

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

Final Order No. 1132 / 2009 SM(Br) /Dated:19.08.2009

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

The relevant facts of the case, in brief, are that the appellants are engaged in the manufacture of different type of glass such as Toughened

Safety Glass (TSG), Laminated Safety Glass (LSG), Glass Mirror, etc. classifiable under Heading No.7004.10, 7004.20 and 7006.90 of the Schedule to the Central Excise Tariff Act, 1985. They were availing Cenvat Credit benefit. On 1.4.2005, the appellant opted to avail benefit of SSI exemption Notification no.8/03-CE dated 1.3.2003. A show cause notice dated 30.03.2006 was issued proposing as to why an amount of Cenvat credit of Rs.1,10,827/- was required to be deposited by the appellant before availing exemption Notification No.8/2003-CE dated 1.3.2003. It has been alleged that in terms of Rule 11 (2) of the Cenvat Credit Rules, 2004, the appellants shall be required to pay an amount equivalent to the Cenvat credit, if any, allowed to him in respect of inputs lying in stock or in process or contained in final products lying in stock on the date when such option exercised. The Original Authority confirmed the demand of Rs.1,10,827/- along with interest and also imposed penalty of equal amount. The Commissioner (Appeals) upheld the adjudication order.

2. Ld. Advocate on behalf of the appellant submits that while opting SSI exemption on 1.4.2005, the appellant had no balance in their Cenvat Account and, therefore, there is no scope to recover the said amount from them. He relied upon the decision of the Larger Bench of the Tribunal in the case of HMT Vs. Commissioner of Central Excise, Panchkula -2008 (232) ELT 217 (T-LB).

3. Ld. SDR on behalf of the Revenue reiterates the findings of the Commissioner (Appeals). He submits that the appellant availed the credit on the goods, which was attached by the Department. He submits that the attachment of the goods for the recovery of the dues and payable by the appellant, in other proceedings, can be recovered by the department in the present proceedings.

4. After hearing both the sides and on perusal of the records, I find that it is revealed from the show cause notice that the demand was raised under Rule 11 (2) of the Cenvat Credit Rules, 2004 in respect of the stock of inputs lying at the time of opting to avail SSI exemption. The contention of the ld. SDR that the goods in question were attached by the Department have not been mentioned in the show cause notice. Thus, the contention of the ld. SDR cannot be accepted. .

5. I find that this issue has already been decided by the Larger Bench of the Tribunal in the case of HMT (supra) in favour of the assessee held as under:-

> "22. In view of the above discussions, we hold that when the input-credit legally taken and utilised on the dutiable final products, need not be reversed on the final product becoming exempt subsequently w.e.f. 9.7.2004. The decision of the Bangalore Bench in the case of TAFE Ltd. (Tractor Division) Vs. CCE, Bangalore -2007 (210) ELT 571 (Tribunal) = 2007 (79) RLT 706 (Tribunal-Bangalore) enunciated the correct position of the law. The issue is thus, answered in favour of the assessee and against the Revenue.
>
> 23. Before we part, we observe that this order is passed without going into the submission of the ld. Advocate that the

Notification No.10/2007-CE (NT) dated 1.3.2007 inserted sub-rule (3) to Rule 11 of the Rules, 2004, is a specific provision for reversal of credit because such issue was not in the referral order."

6. In view of the above decision of the Larger Bench of the Tribunal in the case of HMT (supra), the impugned order cannot be sustained. Accordingly, it is set aside. The appeal filed by the appellant is allowed with consequential relief.

Order dictated & pronounced in open court on 19.08.2009.

(P.K. Das)
Member (Judicial)

Ckp.