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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/3285/2006 – SM[BR] Date 23/09/2009

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

To :
C.C.E.DELHI III,GURGAON

UDYOG MINAR,UDYOG VIHAR,VANIJYA
NIKUNJ,PHASE-V,.GURGAON.
C.C.E.DELHI III,GURGAON Appellant

Vs

M/S S.M.CREATIVE ELECTRONICS LTD Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1146 / 2009 –SM[BR] dated 15.7.2009

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent

M/S S.M.CREATIVE ELECTRONICS LTD

10.ELECTRONIC CITY,SECTOR-18,GURGAON.
2. Adv. / Consult SHRI A.K.MISHRA ADV.
N/V;-------------------------------

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.3285 of 2006-SM (BR)

[Arising out of Order-in-Appeal No.228/NS/GGN/2006 dated 3.8.2006 passed by the Commissioner of Central Excise (Appeals), Delhi-III, Gurgaon)

Date of Hearing/ Decision: 15.07.2009

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? : 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? : Y-N

CCE, Delhi-III ...Appellants

(Rep. by Shri S.N. Srivastava, SDR)

Vs.

M/s. S.M. Creative Electronics ....Respondent

(Rep. by Shri A.K. Mishra, Advocate)

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

Final Order No.1146/2009-SM(BR)/Dated:15.07.2009

Per P.K. Das:

The relevant facts of the case, in brief, are that the respondents are engaged in the manufacture of electronic parts of telecom equipments and converters classifiable under Heading No.8517 and 8504 of the Schedule to the Central Excise Tariff Act, 1985. The central excise officers during audit in the month of April, 2004, noticed that the respondent utilised duty paid inputs in the manufacture of dutiable and exempted finished goods. Shri Deepak Goel, Manager (Finance) in his statement dated 22.11.2004 stated that as regards exempted goods cleared to C.DOT and MSTL, they have not maintained separate account for inputs and deposited a sum of Rs.53,625/- on account of 8% of value of exempted goods under Rule 6(3) of Cenvat Credit Rules. He also stated that as regards clearance of exempted goods to Bhabha Kalpakkam, they reversed Cenvat credit of Rs.82,516.00 taken on inputs used in exempted goods. Show cause notice was issued proposing demand of amount of 8% on the clearance of exempted goods supplied to C.DOT, MSTL including Bhabha Kalpakkam, wherein the respondent reversed input credit used in exempted goods. The Original Authority confirmed the demand of Rs.5,56,362/- and appropriated the amount of Rs.1,36,141/- as deposited by them against the clearance of the exempted goods. He also imposed penalty of equal amount under Section 11 AC of the Act. The Commissioner (Appeals) modified Adjudication Order and upheld appropriation of the amount deposited by the respondent and demand of interest. Penalty is set aside.

2. Ld. DR on behalf of the Revenue submits that the respondents had not maintained separate accounts for receipt, consumption of inputs and inventory of the inputs meant for use in the manufacture of exempted

goods of Bhaba, Kalpakkam. He also submits that the record placed by the respondents before the adjudicating authority was not prepared at the time of clearance of the exempted goods. It is his contention that the records placed by the respondents in respect of reversal of credit on the supply of Bhabha Kalpakkam is manipulated. He also submits that the Commissioner (Appeals) did not examine these facts.

3. Ld. Advocate on behalf of the respondents reiterates the findings of the Commissioner (Appeals). He submits that the respondents reversed the credit in respect of supply to Bhabha Kalpakkam before detection of the audit and after clearance of the goods. He also submits that the records were prepared after clearance of the goods and cannot be brushed aside on this ground alone without disputing the figures therein. He also submits that there is no allegation even in grounds of appeal that the records are manipulated. He submits that the Hon'ble Allahabad High Court in the case of Hello Minerals Water (P) Ltd. Vs. Union of India reported in 2004 (174) ELT 422 (Allahabad) held that reversal of credit can be made even subsequent to clearance of final products. He relied upon the decision of the Tribunal in the case of ETA Technology Ltd. Vs. CCE, Bangalore reported in 2007 (212) ELT 371 (Tribunal-Bangalore), wherein it has been held that on reversal of Cenvat credit availed on inputs on removal of exempted goods, situation is put back inasmuch as appellants are deemed not to have availed credit at all. The Tribunal also relied upon the decision of the Hon'ble Supreme Court in the case of

Chandrapur Magnet Wires (P) Ltd. Vs. CCE, Nagpur reported in 1996 (81) ELT 3 (SC).

4. After hearing both the sides and on perusal of the records, there is no dispute that the respondents reversed the credit on inputs used in the exempted products supplied to Bhabha Kalpakkam to the amount of Rs.82,516/- after clearance of the exempted goods. They have also supplied four consignments to NSTL and C.DOT, wherein amount of 8% of price of exempted goods was paid, after detection by the Audit party. The contention of the ld. DR is that the respondents paid the amount of 8% of the total price of the exempted goods in respect of four consignments and, therefore, they are also liable to pay 8% in respect of supply of Bhabha Kalpakkam as the respondents had not maintained proper accounts at the time of clearance of goods. In this context, the Original Authority observed that the submission of the respondents about maintenance of separate accounts of inputs meant for supply to Bhabha Kalpakkam is not free from doubt. It is his contention that the records were prepared at a later stage after detection by the Audit party. But, it is undisputed fact that the respondents reversed the credit in respect of supply of exempted goods after clearance of the goods. The Hon'ble Allahabad High Court in the case of Hello Minerals Water (P) Ltd. (supra) held as under:-

> 18. In view of the above decision, we are of the opinion that reversal of Modvat credit amounts to non-taking of

credit on the inputs. Hence, the benefit has to be given of the notification granting exemption/rate of duty on the final product since the reversal of the credit on the input was done at the Tribunal's stage.

26. Thus, all the Division Benches of the Tribunal has been following the Larger Bench decision and have taken a consistent view that reversal of the credit can be made even subsequent to the clearance of the final products. The impugned order dated 1.10.2003 appears to be the only order which is contrary to the consistent view taken so far.

30. In these circumstances, the order of the Tribunal dated 1.10.2003 in so far as it relates to denial of the benefit of Notification No.15/1994-CE is liable to be, and is hereby, set aside. The petitioner is thus entitled to the benefit of the said Notification No.15/1994-CE, dated 1.3.2004 and reversal of Modvat credit on the inputs namely PVC granules used in the manufacture of PVC/PP bottles, which have been admittedly reversed by the petitioner, even though after clearance of the final product."

5. In the case of ETA Technology Ltd. (supra), the Tribunal held as under:-

> " On a careful consideration, I am of the considered opinion that the principle laid down by the Apex Court in the case of Chandrapur Magnets case continues to apply despite the introduction of new Cenvat Rules. The Cenvat credit is availed when duty has been paid on the inputs. The said principle continues to operate even under the new rules. Therefore, on reversal of the Cenvat Credit availed on the inputs on removal of exempted goods, the situation is put back inasmuch as the appellants are deemed not to have availed credit at all. This is not the situation as in the case of National Information Technologies where the

> assessee had not reversed the input availed on the exempted goods. Hence, the Tribunal confirmed the demands at 8% of the price of the exempted goods. Hence, the Tribunal confirmed the demands at 8% of the price of the exempted goods. The ratio of the Chandrapur Magnets case applies to the facts of the case as the assessee had reversed the credit at the time of removal of goods as the assessee had reversed the credit at the time of removal of goods, hence they are not required to pay 8% of the price of the exempted goods as confirmed in the impugned order. The appeal is allowed with consequential relief, if any."

6. It is seen that the Hon'ble High Court and the Tribunal consistently viewed that reversal of the credit can be made even subsequent to the clearance of the final products. In this situation, the demand of the amount of 8% of the total price is not justified.

7. In view of the above discussion, I do not find any reason to interfere the order of the Commissioner (Appeals). Accordingly, the appeal filed by the Revenue is rejected.

Order dictated & pronounced in open court on 15.07.2009.

(P.K. Das)
Member (Judicial)

Ckp.