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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 09/10/2009

Appeal No. E/2283/2007 – SM[BR] with E/Co/237/2007-SM(BR)

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

To :
C.C.E. DELHI IV
NEW CGO COMPLEX, NH-IV, FARIDABAD,
HARYANA 121001.
C.C.E. DELHI IV

Appellant
Vs
Respondent

M/S PRECISION CASTINGS

I am directed to transmit herewith a certified copy of **Final order No.** 1211 / 2009 –SM[BR] dated 15.9.2009

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 PRECISION CASTINGS
   14/5, MATHURA ROAD, FARIDABAD
2. Adv. / Consult SHRI K.L.HANDA CONSULLANT
   H.NO. 689 SECTOR-16,
   FARDABAD[H.R.]

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
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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: 15.9.2009

Central Excise Appeal No.2283 of 2009 with Cross-Objection No.E/237/2009

Arising out of the out of the order in appeal No.50/CE/Appl/DLH-IV/2007 dated 21.5.2007 passed by the Commissioner (Appeals), Central Excise , Delhi IV (Faridabad).

C.C.E., Delhi IV .... Appellant

Vs.

M/s Precision Castings .... Respondent

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

Appearance:

Shri Vijai Kumar, Authorized Departmental Representative (SDR) for the Revenue and Shri K.L. Handa, Consultant for the respondent

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

Oral Order No. 1211/2009 SM (BR)

Per M. Veeraiyan:

1.1 Appeal No.E/2283/2009 is by the Department against the order of Commissioner (Appeals) No. 50/CE/Appl/DLH-IV/2007 dated 21.5.2007.

1.2 Cross-Objection No.E/CO/237/2009 is by the party in connection with the said appeal.

1.3 As both the appeal and the cross-objection involve the same issue, they are being disposed of by this common order.

2. Heard both sides.

3. The relevant facts, in brief , are that the respondents manufacture parts and accessories of motor vehicle, gear and shafts etc. and they cleared some of the final products availing exemption under Notification No.64/95-CE dated 16.3.95. The Audit party noticed that the party has used furnace oil and use of the said furnace oil is in relation to the manufacture of exempted goods as well as dutiable goods. Accordingly, raised objection that the party is not eligible to the Cenvat credit availed on furnace oil used in the manufacture of exempted goods. On the basis of show cause notice issued , the original authority confirmed the demand of duty of Rs.1,07,803/- and imposed a penalty of Rs.45,096/-. On appeal, the Commissioner (Appeals) has set aside the order of the original authority. Hence the Department is in appeal and seeks restoration of the order of the original authority. The cross-objection filed by the party is in the nature of supporting the decision in the order of the Commissioner (Appeals) which is fully in their favour but their grievance is that some of the judgments relied upon by them have not been discussed in the order by the Commissioner (Appeals).

4. Learned SDR takes to the grounds of appeal and reiterates the same.

5. Learned Consultant for the party supports the order of the Commissioner (Appeals) and relies on the decision of the High Court of Gujarat in the case of C.C.Ex. & Cus. vs. Gujarat Narmada Fertilizers Co. Ltd. reported as 2006 (193) ELT 136 (Guj.) wherein it has been held that the maintenance of separate account need not be maintained when the inputs are used as fuel.

6.1 It is noticed that the original authority, noting the party has not maintained separate accounts in respect of furnace oil used in relation to the exempted goods and the furnace oil used for dutiable goods, confirmed the demand of duty along with interest and imposed penalty. The dispute relates to interpretation of Rule 6 of Cenvat Credit Rules prevailing at the relevant time. The said Rule is reproduced below:

> ***"Rule 6: Obligation of manufacturer of dutiable and exempted goods:-***
>
> *(1) The CENVAT credit shall not be allowed on such quantity of inputs which is used in the manufacture of exempted goods, except in the circumstances mentioned in sub-rule (2).*

(2) *Where a manufacturer avails of CENVAT credit in respect of any inputs except inputs intended to be used as fuel, and manufactures such fi8nal products which are chargeable to duty as well as exempted goods, then, the manufacturer shall maintain separate accounts for receipt, consumption and inventory of inputs meant for use in the manufacture of exempted goods and take CENVAT credit only on that quantity of inputs which is intended for use in the manufacture of dutiable goods."*

6.2 The Commissioner (Appeals) has recorded the following findings while allowing the appeal:

> *"From the bare reading of sub-rule (1) above, it is evident that this sub-rule does not blindly say that the Cenvat credit of all the inputs used in the manufacture of exempted goods, would not be admissible, rather the said sub-rule contains* ***exception*** *clause i.e.,* ***except in the circumstances mentioned in sub-rule (2) and further sub-rule (2)*** *above has put the cenvatable inputs used as fuel in the exception category, therefore, the joint reading of both the above sub-rules makes it quite clear that the inputs used as fuel are exception to the provisions of Rule 6(1) and (2) of the Cenvat Credit Rules and that being so, the appellants were neither required to maintain a separate record nor to reverse the Cenvat credit on the furnace oil used by them in the manufacture of exempted goods cleared at Nil rate of duty under Notification No.64/85-CE dated 16.3.95".*

6.3 The Commissioner (Appeals) has also relied on the decision of the Tribunal in the case of M/s Indore Steel & Iron Mills Ltd. vs. C.C.E., Indore reported as 2002 (147) ELT 611 (Tri-Del.).

7. The grounds of appeal taken by the Department, do not disclose any reason to interfere with the order of the Commissioner (Appeals). Further, the decision of the High Court of Gujarat in the case of Gujarat Narmada Fertilizers Co. Ltd. supports the case of the party. It is also noticed that the Rule 6(2) of Cenvat Credit Rules have been amended with effect from 16.5.2005 by Notification No.27/2005-CE(NT) dated 16.5.2005, inter alia, deleting "except inputs intended to be used as fuel". The dispute relates to the period prior to the amendment . In view of the above, the decision of the Commissioner (Appeals) in favour of the party does not call for any interference.

8. The appeal by the Department is, therefore, rejected. Cross-Objection of the party, which is basically in support of the order of the Commissioner (Appeals), is also disposed of.

(M. Veeraiyan)
Member (Technical)

scd/