

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/2268/2007 -SM[BR]

Date 09/10/2009

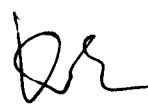
Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S BANSAL ALLOYS & METALS LTD.
G.T. ROAD, SIRHIND SIDE, MANDI GOBINDGARH
M/S BANSAL ALLOYS & METALS LTD.

Appellant
Vs
Respondent

C.C.E. CHANDIGARH

I am directed to transmit herewith a certified copy of Final order No. 1213 / 2009 -SM[BR] dated 17.9.2009
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944


Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent

C.C.E. CHANDIGARH

C.R. BUILDING, PLOT NO. 19, SECTOR 17-C, CHANDIGARH 160017

2. Adv. / Consult

MR.KAMALJEET SINGH

J-144, PATEL NAGAR -I, GHAZIABAD.

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 Publications 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 Kuni, New Delhi - 110070

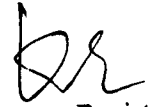
13 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026

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 (Harvana)

16 Office Copy

17 Guard file


Assistant Registrar
(SM Appeal Branch)

**IN THE CUSTOMS, EXCISE & SERVICE
TAX APPELLATE TRIBUNAL,
WEST BLOCK NO. 2, R.K. PURAM,
NEW DELHI**

COURT – III

CENTRAL EXCISE APPEAL NO. 2268 OF 2007-SM

[Arising out of Order-in-Appeal No. 178-179/CE/CHD/2007 dated 13.06.2007 passed by the Commissioner (Appeals), Central Excise, Chandigarh]

Date of hearing : 27.7.2009

Date of pronouncement: 17.9.2009

For approval and signature:

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

1.	Whether Press Reporters may be allowed to see the order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	
2.	Whether it would be released under Rule 27 of the 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?	
4.	Whether order is to be circulated to the Departmental authorities?	Yes

M/s. Bansal Alloys & Metals Ltd.,

Appellants

Vs.

CCE, Chandigarh

Respondent

Appearance:

Shri Kamal Jeet Singh, Advocate for the Appellants;

Shri S. Gautam, SDR for the Respondent

Coram:

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

FINAL ORDER NO. 1213 / 2009 ^{SM (Br)} **dated** _____

Per P.K. Das:

The relevant facts of the case, in brief, are that the appellants are engaged in the manufacture of Iron & Steel Ingots classifiable under Chapter 72 of the Schedule to the Central Excise Tariff Act, 1985. They were availing Cenvat credit benefit on final product. They also paid service tax on the transportation of goods by road. The appellants removed the inputs as such after reversal of Cenvat credit on input availed by them under Rule 3(5) of Cenvat Credit Rules, 2004 during the period January, 2005 to October, 2005. It has been alleged that the appellants had not reversed the Cenvat credit of service tax availed in respect of transportation of goods by road. Original authority confirmed the demand of Rs. 62,948/- and appropriated the said amount as deposited by them and also imposed penalty of equal amount along with interest. Commissioner (Appeals) upheld the adjudication order.

2. Learned Advocate on behalf of the appellants submits that Rule 3(5) of the Rules provides that the manufacturer of final product shall pay an amount equal to the credit availed in respect of such inputs. He also submits that there is no provision for reversal of input service credit. He further submits that Rule 3(1) of the Rules provides that the manufacturer shall be allowed to take credit of the duty paid on inputs or capital goods

and any input service. Thus, input credit cannot include the input service credit. He also filed written submissions. He relied upon the decision of the Tribunal in the case of Chitrakoot Steel & Power Pvt. Ltd. vs. CCE, Chennai, reported in 2008 (10) STR 118 (Tri.-Chennai).

3. Learned S.D.R. on behalf of the Revenue reiterates the findings of the Commissioner (Appeals). He submits that from the reading of Rule 3(5) of the Rules read with Rule 3(1) of the Rules, it is very clear that the manufacturer of the final product shall pay an amount equal to the credit availed in respect of input and input service. He also submits that Rule 3(5) of the Rules indicates reversal of credit of duty paid under Sub-rule (1) of Rule 3 of the Rules. Rule 3(1) of the Rules includes credit on input or capital goods and input service.

4. After hearing both sides and on perusal of the records, the relevant portion of the Rule 3 of the Rules is reproduced below:-

“Rule 3. CENVAT credit. – (1) A manufacturer or producer of final products or a provider of taxable service shall be allowed to take credit (hereinafter referred to as the CENVAT credit) of –

x x x x x x x x x x x x

(i) any input or capital goods received in the factory of manufacture of final product or premises of the provider of output service on or after the 10th day of September, 2004; and

(ii) any input service received by the manufacturer of final product or by the provider of output services on or after the 10th day of September, 2004.

x x x x x x x x x x x x

(5) When inputs or capital goods, on which CENVAT credit has been taken, are removed as such from the factory, or premises of the provider of output service, the manufacturer of the final products or provider of output service, as the case may be, shall pay an amount equal to the credit availed in respect of such inputs or capital goods and such removal shall be made under the cover of an invoice referred to in rule 9.”

5. Rule 3(1) provides that the manufacturer shall be allowed to take credit of the duty paid on any input or capital goods and any input service. Rule 3(5) of the Rules provides that the manufacturer of final product, or provider of output service, as the case may be, at the time of removal of input or capital goods as such from the factory, shall pay an amount equal to the credit availed in respect of such input or capital goods. From the plain reading of Rule 3(5) it is clear that the manufacturer shall be required to pay an amount equal to the credit in respect of such input or capital goods. On the other hand, Rule 3(1) allowed the manufacturer to take credit on any input or capital goods and any input service. Rule 3(5) does not indicate for payment of equal amount in respect of credit of input service. It is well settled that while interpreting the statute no addition or subtraction can be made and the

words used therein must be given their plain meaning. So, the appellants are ~~not~~ required to reverse equal amount of input credit on removal of the inputs as such under Rule 3(5) of the Rules. There is no provision for payment of credit on input service. So, reversal of credit on input service in respect of Goods Transportation Agency service is not justified.

6. The Tribunal in the case Chitrakoot Steel & Power Pvt. Ltd. (supra) held as under:-

“On a careful study of the statutory provisions, it is seen that when the credit-availed inputs or capital goods are removed from the factory of the assessee, sub-rule (5) of Rule 3 of the Cenvat Credit Rules, 2004 provides for recovery of equal amount of credit. There is no such provision to reverse credit of service tax availed in relation to such inputs or capital goods when removed from the factory. Moreover, Rule 14 of the Cenvat Credit Rules, 2004 provides for recovery of Cenvat credit availed or utilized wrongly. In the instant case, the appellants had taken the credit correctly in terms of the statutory provisions. No provision exists in the Finance Act, 1994, which would render utilization of such credit erroneous for the reason that some of the inputs, transport of which yielded GTA service tax credit are returned as not suitable. The credit availed is any way used to pay duty on the finished goods. In the circumstances, I find that the impugned order sustaining the demand of service tax and education cess to be not sustainable and accordingly vacate the same.”

7. In view of the above discussion, I find that the impugned order is not sustainable. Accordingly, the same is set aside. Appeal is allowed with consequential relief.

(Pronounced in the Open Court on 17.09.88)

(P.K. DAS)
MEMBER (JUDICIAL)

RK