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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/2629/2007 – SM[BR] Date 12/10/2009

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

To :
M/S SUDHIR FORGING
KANGWAL ROAD, V.P.O, JUGIANA LUDHIANA (PUNJAB)

M/S SUDHIR FORGING Appellant
Vs
C.C.E. LUDHIANA Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1224 / 2009 –SM[BR] dated 22.9.2009 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. LUDHIANA
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 MR.K.K ANAND
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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)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R.K.Puram, New Delhi-110066.
Principal Bench, New Delhi.

E/2629/07-SM

(Arising out of Order-in-Appeal No.146/CE/Appl./LDH/07 dt.29.6.07 passed by the Commissioner(Appeals), Jalandhar)

M/s. Sudhir Forging — Appellant

Versus

CCE, Ludhiana — Respondent

Appearance
Sh. Hemant Bajaj, Adv. For Appellant

Sh. Sansar Chand, DR for Respondent

Coram: Hon'ble Mr. RAKESH KUMAR, MEMBER (TECHNICAL)

Final Date of Hearing: 22.9.09
Order No. 1224/2009 SM (BR)

Per Rakesh Kumar:

The appellant manufacture rough steel forging for themselves as well as for a principal manufacturer on job work basis. In case of manufacture of rough steel forgings on job work basis, they received the inputs-alloy steel rounds, from the principal manufacturer, but they used their own furnace oil, RFO and LDO for which they took Cenvat credit. The rough steel forgings manufactured on job work were cleared to the principal manufacturer without payment of duty under Notification

No.214/86-CE and the principal manufacturer thereafter cleared the finished goods on payment of duty. The point of dispute is as to whether in such a situation, the appellant is eligible for Cenvat credit of duty on LDO, Furnace Oil and RFO. The Asstt. Commissioner holding that they would not be eligible for Cenvat credit of duty on LDO, Furnace Oil and RFO, which was used for manufacture of rough steel forgings on job work basis, which in turn, were cleared for manufacture of finished goods to the principal manufacturer, has, vide order-in-original dt.10.1.07 confirmed Cenvat credit demand of Rs.1,93,040/- alongwith interest and imposed the penalty of Rs.25,000/- under Rule 15 of Cenvat Credit Rules,2004. The Commissioner(Appeals) vide impugned order-in-appeal upheld the Asstt. Commissioner's order. It is against this order that the present appeal has been filed by the appellant.

2. Heard both sides.

2.1 Shri Hemant Bajaj, Advocate, Ld. Counsel for the appellant pleaded that this very issue has been decided by the Larger Bench of the Tribunal in the case of Sterlite Industries(I) Ltd. vs CCE, Pune reported in 2005(183)ELT.353(Tri.-LB) wherein it was held that job worker, who received goods from the manufacturer under Rule 57E of erstwhile Central Excise Rules,1944, is entitled to take credit of duty in respect of other inputs received directly and used by him in the manufacture of said goods on job work basis; and that the same view has been taken by the Tribunal in the following cases:

(1) CCE, Raigad vs Mahalaxmi Seamless Ltd.
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(2) Samsung India Electronics Ltd. & Ors. Vs CCE, Noida
2006(75)RLT.674(Cestat-Del.)

(3) Bharat Fritz Wernere Ltd. vs CCE, Bangalore-II
2005(191)ELT.1099(Tri.-Bang.)

(4) CCE, Bangalore-II vs South India Wire Products P. Ltd.
2008(86)RLT.566(CESTAT-Bang.)

(5) Shree Venkatesh Steel Ltd. vs CCE, Mumbai
2007(81)RLT.356(Cestat-Mum).

He pleaded that the Tribunal's judgment in the case of CCE, Raigad vs Mahalaxmi Seamless Ltd.(supra) is based on the Hon'ble Mumbai High Court's judgment in respect of appeal filed by the Deptt.(76/08) wherein Hon'ble Mumbai High Court with regard to the Tribunal's judgment in the case of Sterlite Inds.(supra) observed that the judgment is based on the law laid down by the Hon'ble Supreme Court in the case of Escorts Ltd. vs CCE, Delhi reported in 2004(174)ELT.145(SC) and hence no question of law arises in the Revenue's appeal. Shri Hemant Bajaj pleaded that since issue involved in this case stands settled in favour of the appellant, the impugned order is not correct.

2.2 Shri Sansar Chand, Ld. DR, pleaded that the ratio of the judgment cited by the Ld. Counsel for the appellant is not applicable, as this is a case where the appellant cannot be said to be a job worker as they also manufactured goods ~~on~~ of their own, while job worker is that who manufactures purely on job work basis; that in such situation, the provisions of Rule 6(2), become applicable and in respect of rough steel forgings cleared at nil rate of duty, the appellant should have reversed the proportionate and that all the judgments cited by the appellant are for the period prior to issue of Notification No.27/05-CE dt.6.5.05 by which the exclusion of fuel inputs from the operation of Rule 6(2) had been removed and that if cenvated fuel inputs are used for dutiable as well as exempted goods, either separate accounts are required to be maintained, and if such separate accounts are not maintained, proportionate credit in respect of exempted goods is to be reversed. He also pleaded that the fact that out of total disputed amount of Rs.247508/-, the appellant have paid an amount of Rs.54568/- which shows that the appellant themselves have accepted that they are not eligible for this credit. He also pleaded that since the appellant have taken wrongly Cenvat credit and have not reversed, penalty has been rightly imposed.

3. I have carefully considered the submissions of both the sides and perused the records. The appellant manufactured rough steel forgings for themselves as well as on job work basis for a principal manufacturer. The rough steel forging are cleared at Nil rate of under under Notification No.214/86-CE, which are used by principal manufacturer for manufacture of finished goods, which are cleared on payment of duty. The point of dispute is as

to whether the appellants are eligible for Cenvat credit of duty on LDO. FO, RFO which was used in the manufacture of rough steel forgings ~~are~~ which were cleared to the principal manufacturer at Nil rate of duty under Notification No.214/86-CE. I find that this issue is squarely covered in the appellant's favour by Larger Bench judgment of the Tribunal in the case of Sterlite Industries (I) Ltd. vs CCE, Pune(supra) and subsequent decisions of the Tribunal is based on the Larger Bench decision. I also find that the correctness of the Larger Bench's judgment in the case of Sterlite Inds.(I) Ltd. has been confirmed by the Hon'ble Mumbai High Court in respect of Appeal No.76/08 filed by the Revenue. Just because the appellant in addition to manufacture of rough forgings on job work basis, also manufactured the rough forging for themselves, they do not cease to the job worker and therefore, I hold that the ratio of the Tribunal's judgment in the case of Sterlite Inds.(I) Ltd.(supra) is squarely applicable to this case. In view of this, the impugned order is not correct and the same is set aside. The appeal is allowed.

Order dictated in the open Court.

(Rakesh Kumar)
Member Technical

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