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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 14/10/2009

Appeal No. E/1238 – 1239 / 2007 –SM[BR]

Assistant Registrar
C.E.S.T.A.T, New Delhi
To :
1. M/S LAKSHMI SUGAR MILLS CO. LTD.
2. M/S LAKSHMI SUGAR MILLS CO. LTD.
P.O.IQBALPUR, ROORKEE (UTTARANCHAL) Appellant
Vs
M/S LAKSHMI SUGAR MILLS CO. LTD. Respondent

C.C.E. MEERUT I

I am directed to transmit herewith a certified copy of **Final order No**. 1233 – 1234 / 2009 –SM[BR] dated 13.8.2009 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. MEERUT I
EXCISE CHOWK, UNIVERSITY ROAD, MANGAL PANDEY NAGAR, MEERUT - 250005.
2. Adv. / Consult
MR.AALOK ARORA,ADV
82-MISSION COMPOUND,SAHARANPUR (U.P.)

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 Kuni. New Delhi - 110070
13 Taxmann Allied Service Pvt Ltd.. 21/35. West Puniabi Bagh. New Delhi - 110026
14 Easv 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)
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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 Appeals Nos.E/1238-39 of 2007-SM (BR)

[Arising out of Order-in-Appeal No.34-35/CE/MRT-I/2007 dated 23.02.2007 passed by the Commissioner of Central Excise (Appeals), Meerut (U.P.)]

Date of Hearing/ Decision:13.08.2009

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.
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? : Yes.

M/s. Lakshmi Sugar Mills Co. Ltd. and Another ...Appellants
(Rep. by Shri Alok Arora, Advocate

Vs.

CCE, Meerut-I ...Respondent
(Rep. by Shri I.K. Baig, SDR)

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

Final Order No. 1233-1234/2009-SM(BR)/Dated:13.08.2009

Per P.K. Das:

These appeals arise out of the common order and, therefore, both are being taken up together for disposal. The appellants are engaged in the manufacture of Sugar and Molasses classifiable under sub-heading

No.1701.31/39 and 1703.10 of the Schedule to the Central Excise Tariff Act, 1985.

2. The appellants filed two refund claims on 7.6.2006 as a consequential relief arising out of the Tribunal Final Order No.323-324/06-SM (BR) dated 26.02.2006. The Original Authority sanctioned the refund claim and issued cheque in respect of the amounts, which they paid through PLA. The balance amount of Rs.1,21,358/- and Rs.1,46,678/- were allowed to take credit in their RG-23 C Part-II Account. The Commissioner (Appeals) upheld the adjudication order.

3 Ld. Advocate on behalf of the appellant submits that the refunds are arising out of the consequential relief of the Tribunal's order. He submits that in the month of November, 2005, they availed the exemption notification no.50/2003-CE dated 10.06.2003 and, therefore, they are not able to take credit in their Cenvat Account. He submits that the Commissioner (Appeals) observed that the exemption notification is for a period of 10 years and they can take credit even after 10 years, which is not proper and justified. He relied upon the decision of the Hon'ble Karnataka High Court in the case of Union of India Vs. Slovak India Trading Co. Pvt. Ltd. - 2006 (201) ELT 559 (Karnataka). He relied upon the decision of the Tribunal in the case as under:-

(1) DCM Fabrics Vs. CCE, Jaipur-II
2009 (19) RLT 463 (CEGAT-Delhi).

(2) Commissioner of Central Excise Vs. Talforge Pvt. Ltd.
2009 (239) ELT 172 (Tribunal-Delhi).

4. Ld. DR on behalf of the Revenue reiterates the findings of the Commissioner (Appeals). He submits that the appellant debited the amount from the Cenvat Account in the month of November, 2005 and opted exemption notifications in the same month. He submits that the balance lying with them at the time of opting of exemption notification would be treated as lapsed. He relied upon the decision of the Larger Bench of the Tribunal in the case of Gauri Plasticulture (P) Ltd. reported in 2006 (202) ELT 199 (T-LB). He also relied upon the Punjab & Haryana High Court in the case of Nahar Industrial Enterprises Ltd. Vs. Union of India - 2009 (91) RLT 212 (P&H).

5. After hearing both the sides and on perusal of the records, I find that the Commissioner (Appeals) observed that the exemption notification no.50/2003 –CE dated 10.06.2006 is for a period of 10 years. It is also observed that the appellant may take the credit in the Cenvat account after 10 years. In my view, this finding is not acceptable in view of the decision of the Hon'ble Karnataka High Court in the case of Slovak India Trading Co. Pvt. Ltd. (supra), wherein it is held that the assessee is entitled to refund any cash even it goes out of Modvat Scheme or Company is closed. However, I find force in the submission of the ld. DR that the Larger Bench of the Tribunal in the case of Gauri Plasticulture (P) Ltd. (Supra) held as under:-

> "**11.** By applying the above ratio of law as arrived at by this Bench to the fact of the instant case, we find that the debit entry in credit account was made by the appellants on 23-11-2000, the Central Excise registration was surrendered by them in September 2000, i.e. before making of debit entry in RG-23 account. As such, even if the amounts towards duty

would not have been debited by them in the said account, the same would have been remained unutilized. As such, on the success of their appeal before the Commissioner (Appeals), they cannot claim the refund of the same in cash, inasmuch as on account of such debit entry, they have not discharged any duty out of PLA. If the said refund is granted to the appellants by way of cash, the same would amount to making him unjustifiable enrich. It is well settled principles of law that what cannot be done directly should not be allowed to be done indirectly. On surrendering of their licence, the appellants was not allowed to claim the refund of the unutilized credit in the Modvat account, the same would have lapsed. As such, utilization of the same towards payment of disputed demand of duty, after surrendering of their registration, has not led to a situation where the assessee was compelled not to use the credit for regular clearances and had to make payment from PLA. As such, in this case we find that the refund in cash is not to be allowed."

6. In the present case, the appellants debited the amount in the month of November, 2005 and opted the exemption notification. Therefore, it is to be examined as to whether the balance lying with them in Cenvat account at the time of opting of exemption notification would be treated as lapsed under the law. This is required to be examined.

7. In view of the above discussion, the impugned order of the Commissioner (Appeals) is set aside. The matter is sent back to the Commissioner (Appeals) to decide afresh on the facts of the present case and in the light of the decision cited above and other decisions placed by the ld. Advocate. Both the appeals are allowed by way of remand.

Order dictated & pronounced in open court on 13.08.2009.

(P.K. Das)
Member (Judicial)

Ckp.