TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

SINGLE MEMBER APPEAL BRANCH

Date 14/12/2009

Appeal No. E/2987/2007 – SM[BR]

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

To :
M/S SINGH ENTERPRISES
B-83-84, 22 GODOWN, INDUSTRIAL AREA, JAIPUR.

M/S SINGH ENTERPRISES — Appellant

Vs

C.C.E. JAIPUR I — Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1519 / 2009 –SM[BR] dated 19.11.2009 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. JAIPUR I
   N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.
2. Adv. / Consult SHRI BIPIN GARG ADV.
   B-1/1289-A, VASANT KUNJ NEW DELHI

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)
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-110066.
Principal Bench, New Delhi.

Excise Appeal No.2987/07-SM

[Arising out of Order-in-Appeal No.273(GRM)/CE/JPR-I/2007 dt.7.9.07 passed by the Commissioner(Appeals),Jaipur)

For approval and signature

Hon'ble Mr. Rakesh Kumar, Member(Technical)

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? :

3. Whether their Lordships wish to see the fair copy of the order? :

4. Whether order is to be circulated to the Department Authorities: :

M/s. Singh Enterprises Appellant

Versus

CCE, Jaipur Respondent

Appearance

Sh. Atul Gupta, C.S. for Appellant

Sh. S.K.Bhaskar, Authorised Departmental Representative(DR) For Respondent

Final

Date of decision: 19.11.09
Order No. 1519/2009 SM(BR)

Per Rakesh Kumar:

The appellant in their factory at C-22, Industrial Estate, Bais Godown, Jaipur were manufacturing excisable goods and were also availing the cenvat credit of duty on the inputs used in the manufacture of the final products. On 24.4.04, the appellant shifted the factory to new premises located at B-83-84, Industrial Estate, Bais Godown, Jaipur. There is no dispute that both the premises are located within the jurisdiction of the same Central Excise Range and also there is no dispute that before shifting their factory, the appellant vide their letter dt.23.4.04 addressed to the jurisdictional Asstt. Commissioner of Central Excise had informed him about their intention to shift their factory to new location. On shifting to the new location, the appellant as per the provisions of Rule 8(2) of Cenvat credit Rules,2002 transferred the balance of the credit of Rs.5,56,288/- to the new R.G.23A Part II Register started for the new location. They also received fresh duty paid inputs at the new location and took cenvat credit amounting to Rs.31,50,654/- during the period from 24.4.04 to 13.7.05. The Department, taking the view that they should not have transferred the credit amounting to Rs.5,56,288/- which was in balance in their cenvat credit account at their old location and they could not have taken cenvat credit in respect of the fresh inputs received at the new location without getting their registration certificate amended, issued SCN dt.20.10.05 for recovery of cenvat credit amounting to Rs.37,06,942/- alongwith interest and also for imposition of penalty on them under Rule 13(2) of Cenvat Credit Rules,2002 as well as Rule 25(1) of Central Excise Rules,2002. The Asstt. Commissionr vide order-in-original dt.30.12.05 confirmed the entire cenvat credit demand alongwith interest and imposed penalty of Rs.2 lakhs on the appellant under Rule 25 of Central Excise Rules,2002 for contravention of the provisions of Rule 9(1) and 9(2) of Central Excise Rules and another penalty of Rs.1,00,000/- on the appellant under Rule 13(2) of Cenvat Credit Rules,2002. The appellant filed an appeal before the Commissioner(Appeals) and the Commissioner(Appeals) vide order-in-original dt.29.8.07 set aside the entire cenvat credit demand and reduced the penalty under Rule 25 of Central Excise Rules,2002 from Rs.2 lakhs to Rs.1 lakh. The penalty of Rs.one lakh imposed under Rule 13(2) of Cenvat Credit Rules,2002 was set aside. The Commissioner(Appeals) while setting aside the Cenvat credit demand gave a finding that irregular availment of Cenvat credit or fraudulent availment of Cenvat credit is not proved and hence there is no question of recovery of Cenvat credit under Rule 12 of Cenvat Credit Rules,2002, but the appellant have contravened the provisions of Rule 9 of the Central Excise Rules. The Appellant have filed this appeal challenging the upholding of penalty to the extent of Rs.one lakh on them under Rule 25 of Central Excise Rules for alleged violation of the provisions of Rule 9(1) and 9(3).

2. Heard both the sides.

2.1 Shri Atul Gupta, Co. Secretary, learned Counsel for the appellant, pleaded that when Commissioner(Appeals) has given a finding that there was no irregular utilization or availment of Cenvat credit and hence there is no question of recovery of the same and on this ground set aside the demand of cenvat credit, there is no justification at all for imposition of any penalty on the appellant under Rule 25(1) of Central Excise Rules,2002, that the appellant have not violated of any provision of Rule 9(1) and Rule

9(3), as the old location as well as new location are situated in the same Range and prior to shifting of the factory to the new location, the due intimation had been given to the jurisdictional Asstt. Commissioner; that even on shifting to new location, no provision of any notification issued by the Board under Rule 9 have been contravened; and that even under Rule 25 of Central Excise Rules also, no penalty can be imposed as the appellants are not covered by clause (a),(b) or (c) of sub-rule (1) of Rule 25 and as regards clause(d), it is not the Department's case that the appellants have contravened the provisions of Rule 9 with intention to evade the payment of duty, as Cenvat credit demand itself has been set aside. In view of this, he pleaded that no penalty was called for.

2.2 Shri S.K.Bhaskar, Ld. DR defended the impugned order and pleaded that the conditions of notification issued by the Board under Rule 9 have been violated in-as-much before shifting to the new location, the appellant should have got their registration certificate amended by filing an application under Annexure 'A', that the appellant have contravened the provisions of Rule 9 as on shifting the factory to the new location, even though within the same range, they should have submitted an application to the jurisdictional Asstt. Commissioner in the prescribed form notifying the change of address and got the necessary amendment in the certificate done, that since the appellant transferred the credit available to them at the old location and started taking cenvat credit on the fresh receipt of the inputs without amendment of the registration certificate, they have contravened the provisions of the Notification No.35/01-CE(NT) dt.26.6.01 issued by the Board under Rule 9 and hence penalty on them is justified.

3. I have carefully considered the submissions from both the sides and perused the records. There is no dispute about the fact that both the locations old as well as new fall in the same range and the appellant prior to shifting the factory to the new location had addressed a letter to the jurisdictional Asstt. Commissioner informing him about the shifting of the factory to the new location. Since the shifting is within the same range even registration number would not change. Taking all the circumstances in-to consideration, the Commissioner(Appeals) has dropped the cenvat credit demand observing that there is no irregular utilization or availment of cenvat credit. The Commissioner(Appeals), however, has still upheld the penalty on the appellant under Rule 25 but though reducing the same to Rs. one lakh observing that they have contravened the provisions of sub-rule (1) & (3) of Rule 9. Sub-rule (1) of Rule 9 of Central Excise Rules provides that every person who produces, manufacturers, carries on trade, holds private store-room or warehouse or otherwise uses excisable goods, shall get registered. Sub-rule (3) of Rule 9 states that the registration under sub-rule (1) shall be subject to such conditions, safeguards and procedure as may be specified by notification by the Board. The appellant had registration in respect of the old location prior to shifting to new location. They had given due intimation to the Asstt. Commissioner and since no change of number was involved

simply the change of address was to be recorded on the registration certificate which could have been done by the jurisdictional Central Excise Officers when they received the intimation regarding the shifting of the factory. The Board has issued a notification No.35/01 dt.6.6.01 under Rule 9 prescribing the conditions and procedure for registration. On going through the notification, I find that none of the conditions prescribed in the notification has been contravened. Moreover, I find force in the appellant's contention that no penalty can be imposed under Rule 25(1) as neither the appellants are covered under clause (a),(b) or(c) of sub-rule(1) of Rule 25 nor they are covered under clause (d) of sub-rule (1) of this Rule as they cannot be said to have contravened any provisions of Central Excise Rules with intention to evade the payment of duty, more so when entire cenvat credit demand had been set aside by the Commissioner(Appeals). In view of this, I hold that the penalty on the appellant under Rule 25(1) is not sustainable and the same is set aside. The appeal is allowed.

Order dictated in the open Court.

(Rakesh Kumar)
Member Technical

km