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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/2757/2007 – SM[BR] WITH CO/ 27 / 2008 –SM[BR] Date 16/12/2009

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

To :
C.C.E. INDORE
MANIK BAGH PALACE, POST BOX NO. 10, INDORE
452001 (M.P.)

C.C.E. INDORE Appellant
Vs
M/S HIM TECHNOFORGE LTD Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1524 / 2009 –SM[BR] dated 10.12.2009 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 HIM TECHNOFORGE LTD
   PLOT NO 264-268 A, SECTOR-1, PITHAMPUR, DISTT- DHAR(MP)
2. Adv. / Consult
   NONE;----------------

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
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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-III

Date of hearing/decision:10.12.2009

Central Excise Appeal No.2257 of 2007-SM with Cross-Objection No.CO/27 of 2008-SM

Arising out of the order in appeal No.IND-I/145/2007 dated 06-08-2007 passed by the Commissioner(Appeals I), Customs & Central Excise, Indore.

For Approval and Signature:

Hon'ble Mr. 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

C.C. & C.Ex, Indore ... Appellant

Vs.

M/s Him Technoforge Ltd. ... Respondent

Appearance:

Shri V.K. Saxena, Authorized Departmentai Representative (Jt.CDR) for the Revenue and none for the respondent

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

Final Order No. 1524/2009 SM (BR)

Per M. Veeraiyan:

Appeal No.E/2757/2007 is by the Department against the order of the Commissioner (Appeals) No. IND-I/145/2007 dated 06-08-2007. The Cross-Objection No.CO/27/2008 is connected to this appeal.

2. None appears for the respondents in spite of notice. Heard the learned Jt.CDR on behalf of the Department.

3. The respondent is a manufacturer of rough forgings and forging articles of steel falling Chapter 7326 of CETA, 1985. They also availed Cenvat Credit of inputs and capital goods. The dispute relates to 'metal band saw blades' and 'steel shots', as to whether they can be considered as capital goods as contended by the Department or can be treated as inputs as claimed by the respondent. The original authority after taking note of the duration of use of these items and the purpose for which they were used held that they were capital goods and therefore, only 50% of the credit was available during the financial year in which materials were received and the balance of 50% was available only during the next financial year. In other words, the respondents have taken total credit in the first year itself and as a result, the original authority held that interest amounting to Rs.59,742/- under Rule 14 of the Cenvat Credit Rules was payable holding that excess inadmissible credit availed during the period 4.2.2006 to 6.2.2006 was admissible only during the year 2007-08. He also imposed a penalty of Rs.50,000/-. Commissioner (Appeals) held that the said items could be considered as inputs and therefore, the credit taken at one go at the time of receipt of the impugned goods were in order and set aside the demand for interest.

4. Learned Jt.CDR referring to the grounds of appeal submits that metal band saw blades and steel shots are to be considered as capital goods as the same cannot function without the capital goods.

5. I have carefully considered the submissions of the learned Jt. CDR and perused the records. The finding of the original authority about the duration of use and nature of use of these two items are as follows:

> " ***The noticee has submitted in their written reply that the life period of metal saw blade (band saw blade),which is fitted with band saw machine and used for cutting the billets, is 2 days.***

Likewise, steel shots are used in blasting machine for cleaning the foreign particles from the molded items inside the machine with the help of Air Pressure by shot blasting machine and as such frequent strikes of 'steel shots' removes foreign particles from the molded items. From their own submission it is clear that these goods are separately being used with the capital goods. They fulfil the definition of capital godos as defined in Rule 2(a)(A(i)& (iii) of Cenvat Credit Rules, 2004 and also the clarification given in the Board's Circular referred to above."

Commissioner (Appeals) has treated the above products as inputs with the following finding:

> *"It appears that the department has taken a view that 'metal saw blades' and 'steel shots' falling under Chapter 82 & 84 respectively would fall under the capital goods category going by the definition of the term capital goods in the Cenvat Credit Rules and the Board's Circular of 1996 which was issued with reference to the definition of capital goods prevailing at that time. However, under the same Cenvat Credit Rules, the term ' input' has also been defined to mean all goods except HSD Oil, LSD and motor spirit used in or in relation to the manufacture of final products whether directly or indirectly and whether contained in the final product or not. In view of this definition of the input under the Cenvat Credit Rules, both the items namely, 'metal saw blades' and 'steel shots' used by the appellants in connection with the production of goods as consumables would merit classification under inputs only and therefore, the credit taken by them is in order."*

6. The term ' input' is a relative term. For example, yarn is an input for grey fabrics , grey fabrics is an input for processed fabrics and processed fabrics is an input for garments etc. Similarly, the term' capital goods' is also a relative terms. A fan can be a capital goods. A fan used in a motor vehicle to cool radiator is an input in relation to motor vehicle manufactured. Keeping the above yardstick in mind, if the role and period of usage as recorded by the original authority is taken into account, the decision of the Commissioner (Appeals)

holding that these two items are inputs cannot be held to be unreasonable. The Commissioner (Appeals) has clearly held that the same are in the nature of consumable used in relation to manufacture of final products and therefore, appropriately to be treated as inputs. No valid grounds have been adduced to interfere with the finding of the Commissioner (Appeals) which is based on appreciation of the factual matrix in the said case.

7. In view of the above, the appeal is rejected. Cross-Objection which is merely in support of the order of the Commissioner (Appeals) is also disposed of.

(M. Veeraiyan)
Member (Technical)

scd/