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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 15/10/2009

Appeal No. E / 2334 / 2007 -SM[BR]

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

To :
C.C.E. RAIPUR
CENTRAL EXCISE BUILDING, DHAMTARI ROAD,
TIKRAPARA, RAIPUR 492001.

Appellant

C.C.E. RAIPUR

Vs

Respondent

M/S SIMPLEX CSTINGS LTD

I am directed to transmit herewith a certified copy of **Final order No**. 1260 / 2009 -SM[BR] dated 22.7.2009 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 SIMPLEX CSTINGS LTD
5, INDUSTRIAL ESTATE BHILAI, DISTT. DURG (CG)
2. Adv. / Consult SHRI H.V. GHIRINKAR ASDV.
M/S RESPONDENT;--------------------

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
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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 Appeal No.2334 of 2007-SM (BR)

[Arising out of Order-in-Appeal No.66 & 67/RPR-II/2007 dated 22.03.2007 passed by the Commissioner of Central Excise (Appeals), Raipur]

**Date of Hearing/ Decision: 22.07.2009**

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? : y-N

CCE, Raipur ...Appellants
(Rep. by Shri R.K. Saini, SDR )

Vs.

M/s.Simplex Castings Ltd. ....Respondent
(Rep. by Shri H.V. Ghirnikar, Advocate)

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

Final Order No...1260/2009 SM (BR)/Dated:22.07.2009

**Per P.K. Das:**

The relevant facts of the case, in brief, are that the respondents are engaged in the manufacture of Iron and Steel Castings, dutiable and exempted goods. The Original Authority denied Cenvat credit on the services tax paid on GTA used on the transportation of procurement of the raw material, used in the manufacture of exempted and dutiable goods. Further, Cenvat credit on Service Tax of GTA was denied on removal of inputs as such. The Commissioner (Appeals) set aside denial of credit. Hence, Revenue filed this appeal.

2. Ld. DR on behalf of the Revenue reiterates the grounds of appeal. He submits that Rule 6(1) of Central Credit Rules, 2004 provides that, "Cenvat credit shall not be allowed on such quantity of input or input services, which is used in the manufacture of exempted goods or exempted services". The Commissioner (Appeals) has erred in allowing credit of Service Tax on GTA on inputs used in the manufacturing of dutiable and exempted goods. He further submits that Rule 3(5) of Cenvat Credit Rules 2004 provides that," 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". The contention of the ld. DR is that the respondents are required to reverse credit of service tax on GTA on removal of inputs as such.

3. Ld. Counsel on behalf of the respondents reiterates the findings of the Commissioner (Appeals). He submits that the credit on input-services were used both on dutiable and exempted products. He submits that Rules 6(5) of the Rules provides that, " no service tax paid on taxable services shall be allowed on such services used exclusively in or in relation to the manufacture of exempted goods or provided exempted services". He submits that in the present case, the taxable service was not used exclusively in or in relation to the manufacture of exempted goods. On the other issue, the ld. Counsel relied upon the decision of the Tribunal in the case of Chitrakoot Steel & Power Pvt. Ltd. Vs. CCE, Chennai reported in 2008 (10) S.T.R. 118 (Tribunal-Chennai).

4. After hearing both the sides and on perusal of the records, I find force in the submission of the ld. Counsel. For the purpose of proper appreciation of the case, the findings of the Commissioner (Appeals) are reproduced below:-

> "8. The second question framed by the lower authority, and which has been answered in the negative against the appellants, is whether or not Cenvat credit on services of GTA is admissible of the transportation of procurement of raw materials used in the manufacture of the exempted goods. In this regard, I observe that sub-rule (5) of Rule 6 in clear terms provides that credit can only be denied if the services are used exclusively in or in relation to the manufacture

of the exempted goods. In other words, if the services are rendered both for exempted and dutiable goods manufactured, as the case here, then the credit taken cannot be denied. Since the service availed is not used exclusively for exempted goods, therefore, the credit of Rs.4,895/- and Rs.4,350/- (service tax) and Rs.91/- and Rs.86/- (education cess) cannot be denied.

9. The third question framed by the lower authority, and which has been answered in the negative against the appellants, is whether or not cenvat credit on the services of GTA is admissible on transportation of raw materials which are subsequently removed as such. In this context, I observe that there is no requirement under the Cenvat Credit Rules, 2004 (in the manner as is specifically provided for reversal of credit in case of removal of inputs as such) for reversing the credit availed on input services even if the inputs are removed as such subsequently. Therefore, credit availed of service tax cannot be denied. Thus for this reason, the credit availed of Rs.1,563/- and Rs.19,643/- (service tax) and Rs.31/- and Rs.392/- (education cess) cannot be denied."

There is no allegation that the input-services were used exclusively in or in relation to the manufacture of exempted products or providing exempted services. Therefore, there is no reason to deny the credit on input-services.

5. On the other issue, the Tribunal in the case of Chitrakoot Steel & Power Pvt. Ltd. (supra) held that there is no provision for recovery of equal amount of credit on input services on removal of input or capital goods from factory as such. The relevant portion of the said decision is reproduced below:-

> "5. On a careful study or 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 on service tax availed in relation to such inputs or capital goods when removal from the factory. Moreover, Rule 14 of the Cenvat Credit Rules, 2004 provides for recovery of Cenvat credit availed or utilised wrongly. In the instant case, the appellants had taken the credit correctly in terms of the statutory provisions. The provision exists in the Finance Act, 1994 which would render utilisation 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 anyway 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 be not sustainable and accordingly, vacate the same."

5. In view of the above discussions, I do not find any reason to interfere the order of the Commissioner (Appeals). Accordingly, the appeal filed by the Revenue is rejected.

Order dictated & pronounced in open court on 22.07.2009.

( P.K. Das )
Member (Judicial)

Ckp.