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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/2431/2007 – SM[BR] Date 21/10/2009

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

To :
C.C.E. MEERUT I
EXCISE CHOWK, UNIVERSITY ROAD, MANGAL
PANDEY NAGAR, MEERUT - 250005.

C.C.E. MEERUT I Appellant

Vs

M/S UNITECH MACHINES LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1291 / 2009 –SM[BR] dated 6.8.2009

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
   M/S UNITECH MACHINES LTD.
   DELHI ROAD, SAHARANPUR.
2. Adv. / Consult SHRI N.K. ARORA ADV.
   M/S RESPONDENTS;-------------

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)
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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.2431 of 2007-SM (BR)

[Arising out of Order-in-Appeal No.121-CE/MRT-I/2007 dated 11.06.2007 passed by the Commissioner of Central Excise (Appeals), Meerut-I]

Date of Hearing/ Decision:06.08.2009

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

CCE, Meerut-I ...Appellants
(Rep. by Shri R.K. Saini, SDR)

Vs.

M/s. Unitech Machines Ltd. ....Respondents
(Rep. by Shri N.K. Arora, Advocate)

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

Final Order No....1291/2009 SM(BR)......../Dated:06.08.2009

Per P.K. Das:

Revenue filed this appeal against the order of the Commissioner (Appeals), whereby the respondents were allowed to take credit of

Service Tax amounting to Rs.2,72,448/- and education cess of Rs.5,449/- in their Cenvat Account.

2. Ld. SDR on behalf of the Revenue reiterates the grounds of appeals. He submits that the respondents debited the amount of Rs.2,72,448/- on 31.07.2005 from Cenvat account and filed refund claim on 29.08.2006. which is beyond the stipulated period of one year as prescribed under Section 11 B of the Central Excise Act, 1944. He submits that the Original Authority rightly rejected the refund claim as time bar. He also submits that Larger Bench decision of the Tribunal in the case of BDH Industries Ltd. Vs. CCE (Appeals), Mumbai reported in 2008 (229) ELT 364 (Tribunal-Larger Bench) held that the assessee is not entitled to avail suo moto credit and they have to file refund claim under Section 11 B of the Central Excise Act. It is his submission that there is no provision for adjustment of the amount of PLA against the credit taken on 31.07.2005.

3. Ld. Advocate on behalf of the respondent reiterates the findings of the Commissioner (Appeals). He submits that they have debited the amount from their Cenvat Account for payment of Service Tax on GTA services, which is permissible under the law. However, the Central Excise officers during audit directed the respondent to deposit the said amount by TR-6 Challan in cahs. Therefore, the respondents as per direction of the Audit Party, deposited the amount in cash on 27.7.2006 in PLA account and the amount debited on 31.07.2005 from Cenvat

account would be adjusted thereon. It is his submission that the present case is not of refund of Cenvat Credit. In other words, it is of adjustment of the amount between Cenvat Account and PLA account deposited in cash deposit. In this regard, he relied upon the decisions of the Tribunal as under:-

(a) Hind Spinners Vs. CCE, Bhopal
2005 (187) ELT 266 (Tribunal-Delhi).

(b) CCE, Pune Vs. Raymond Ltd.
2006 (201) ELT 454 (Tribunal-Mumbai)

4. After hearing both the sides and on perusal of the records, I find that there is no dispute that the respondent debited the Service Tax for payment of GTA services from Cenvat Account on 31.07.2005, which they have adjusted in PLA account by deposit in cash on 27.06.2006 at the instance of the Central Excise officers. It is a case of adjustment of the amount in Cenvat account and PLA account cash deposited by TR-6 Challan. Under the Central Excise and Service Tax Law, the assessee may pay duty/tax from PLA account and Cenvat account. In the present case, the assessee initially paid from Cenvat account. Subsequently, they paid the same amount from PLA account at the instance of the Audit. So, the amount paid from Cenvat account would be permitted to re-credit. They are not claiming any refund of duty. They are requesting to allow adjustment of duty from one account to another account. So, there is no reason to deny the re-credit the amount in their Cenvat Account. The Larger Bench decision as relied upon by the ld. DR is applicable on suo

moto credit. The present case is of adjustment of the amount from one account to the another. Therefore, Larger Bench decision is not applicable to the present case. The finding of the Commissioner (Appeals) is reproduced below:-

> " The appellant have submitted that the Service Tax and Education Cess paid through TR-6 Challan dated 27.06.2006 was in respect of amount paid on 31.07.2005 through Cenvat Credit and thus this was the case of correction of entries in account, hence limitation Clause under Section 11 B of the Central Excise Act was not applicable in the instant case. I find force in contention of the appellant. The amount was wrongly debited by the appellant through input service account. On being pointed out by audit, they deposited the equal amount through TR 6 challan. Therefore, in such situation, where only accounting adjustments were done, there was no reason for filing refund claim because it was not a case of excess/short payment. If the payment is accepted by the department through TR-6 Challan, then there is no reason to deny the credit to them on the plea of Refund Claim being time barred."

5. I agree with the findings of the Commissioner (Appeals). Accordingly, the appeal filed by the Revenue is rejected.

Order dictated & pronounced in open court on 06.08.2009.

(P.K. Das)
Member (Judicial)

Ckp.