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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/2505/2007 – SM[BR] E/ CO / 256 /2007-SM[BR] Date 30/10/2009

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

To :
C.C.E. DELHI IV
NEW CGO COMPLEX, NH-IV, FARIDABAD,
HARYANA 121001.
C.C.E. DELHI IV Appellant

Vs

M/S JBM AUTO LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1341 / 2009 –SM[BR] dated 6.10.2009 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 JBM AUTO LTD.
   PLOT NO.133, SECTOR-24, FARIDABAD, HARYANA
2. Adv. / Consult SHRI R.SANTHANAM ADV.
   C-3/210, JANAKPURI
   NEW DELHI-58.

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)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi-66
COURT-III

Date of hearing/decision: 6.10.2009

Excise Appeal No. 2505 of 2007-SM
Excise/Cross Objection/256/07-SM

[Arising out of Order-in-Appeal No.64/CE/Appl/DLH-IV/2007 dated 19.6.2007 passed by the Commissioner (Appeals), Central Excise, Delhi I].

For approval and signature:

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

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 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.

Commissioner of Central Excise, Delhi IV — Appellants

Vs.

M/s. JBM Auto Ltd. — Respondents

Appearance:

Shri S.K. Bhaskar, SDR for the Appellants
Shri R. Santhanam, Advocate for the Respondents

Coram: Hon'ble Shri P.K. Das, Member (Judicial)

Oral Order No. 1341/2007 SM (BR)

Per P.K. Das :

Revenue filed this appeal against the order of the Commissioner (Appeals) wherein adjudication order was set aside.

2. The relevant facts of the case, in brief, are that ~~that~~ the respondents are engaged in the manufacture of motor vehicle parts classifiable under heading No. 8708 of the schedule to the Central Excise Tariff Act, 1985. They availed Cenvat credit on the basis of duty paid invoice ~~inputs~~ issued by M/s. Allied Metal Technologies. It has been alleged that the respondents availed credit on the inputs namely HR/CR sheet after cutting and slitting process which does not amount to manufacture as declared by the Hon'ble Supreme Court in the case of UOI vs. Faridabad Iron and Steel Traders Association [2005 (181)ELT A68 (SC)] and therefore they are not eligible to take credit on the basis of invoices issued after 2.3.2005. Original authority disallowed Cenvat credit of Rs. 1,55,625/- and imposed penalty of Rs.25,000/- along with interest. Commissioner (Appeals) set aside the adjudication order. Hence Revenue filed this appeal.

3. The learned DR on behalf of the Revenue reiterates the grounds of appeal. He submits that the process of cutting and slitting amounting to manufacture has been nullified by the Hon'ble Supreme Court in the case of Faridabad Iron and Steel Traders Association (supra). He further submits that inputs supplier M/s. Allied Metal & Technologies, was also working in the jurisdiction of the same Commissionerate of the respondent. It has been

held that in the case of input supplier, credit is not admissible in respect of stock received after 2.3.05 vide adjudication order No. 11/KKJ/Adjn/2007 dated 31.5.2007 passed by the Commissioner of Central Excise, Delhi IV, Faridabad. He also submits that the inputs contained in the work in progress lying with the said inputs supplier as on 2.3.05 was reversed by them. He also submits that the respondent had taken credit on inputs received post 2.3.2005, which cannot be legally passed by the input supplier.

4. Learned Advocate on behalf of the respondents submits that there is no dispute that the respondents availed credit on the basis of invoices issued by the inputs supplier. It is well settled that the jurisdictional officer of the recipient of the inputs cannot reopen the assessment of the supplier. He relied upon the decision of the Supreme Court in the case of Commissioner of Central Excise & Customs vs. MDS Switchgear Ltd. [2008 (229) ELT 485 (SC)]. He also relied upon the decisions of the Tribunal in the following cases:

a) Shakun Polymer vs. C.CE & CUS., Daman
[2009 (241) ELT 250 (Tri-Ahmd)];

b) UP State Sugar Corporation Ltd. vs. CCE, Meerut I
[2009 (241) ELT 558 (Tri-Del);

c) Eveready Industries (I) Ltd. vs. CCE, Allahabad
[1998 (103) ELT 672)(Tri)]

5. Heard both sides and perused the records. For the purpose of proper appreciation of facts of the case, the relevant portion of the finding of the Commissioner (Appeals) is reproduced below:

" I find that the facts of the case are very clear that the appellants had availed of the Cenvat credit on the basis of valid duty paying invoices issued by a manufacturer i.e. M/s. Allied Metal Technologies, 39, Industrial Area, Faridabad under Rule 11 of the Central Excise (No.2) Rules, 2002 which are prescribed document for availing Cenvat Credit as per Rule 7 of the Cenvat Credit Rules, 2002. The Cenvat Credit is not deniable as long as it is not established that no duty has been discharged on the inputs cleared by the manufacturer of the said inputs irrespective of the fact that the process through which the said inputs have been obtained amount to manufacture or not as per Circular issued by the CBEC in this regard. I rely on judgement of the Hon'ble Tribunal in the case of M/s. Eveready Industries (I) Ltd. vs. CCE, Allahabad – 1998 (103) ELT 672 (Tribunal) wherein it has been held that denial of part of duty paid on inputs as Modvat credit because such duty not payable or not a normal feature of inputs is wrong and Central Excise authorities having jurisdiction over manufacturer of the final products cannot challenge assessment made by Central Excise authorities having jurisdiction over input supplier. In the instant case also, Central Excise authorities having jurisdiction over the appellants cannot comments and challenge the dutiability or exciseability of the inputs on the issue of process of manufacture of the inputs supplied by the input supplier/ manufacturer and deny Cenvat Credit on the inputs availed by the appellants on the documents prescribed under the Rules ibid. It is not the case of the department either that the appropriate duty has not been paid on the said inputs on which Cenvat Credit had been availed by the appellants. In view of the above, I hold that the appellants have correctly availed Cenvat Credit on the impugned invoices and the order denying the Cenvat Credit is set aside. "

6. On perusal of the grounds of appeal filed by the revenue it is seen that there is no ~~intention~~ indication that the invoices issued by the input supplier after 2.3.05

are declared irregular. In any event, the facts narrated in the grounds of appeal was not mentioned in the show cause notice even in the adjudication order. In my view, the input supplier was also working in the same Commissionerate and even then, no proceeding was initiated to declare the invoices issued by the input supplier after 2.3.05 are invalid and therefore, the jurisdictional officers of the recipient of inputs cannot declare the said invoices as irregular.

7. The Hon'ble Supreme Court in the case of MDS Switchgear Ltd. (supra) held that the quantum of duty determined by the assessing officer of supplier of inputs cannot contest or challenge, by the officer in-charge of recipient unit. The Tribunal consistently in various decisions viewed that the Department has not challenged the assessment of the duty at the supplier's end. The respondent availed credit on the basis of invoices issued by the supplier, cannot be denied.

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

(P.K.Das)
Member(Judicial)

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