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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 04/11/2009

Appeal No. E/2729/2007 – SM[BR]

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

To :
M/S FCL TECHNOLOGIES & PRODUCTS LTD
UFLEX LTD,L-1,GHIRONGI, MALANPUR
INDUSTRIAL AREA, DISTT- BHIND(MP)
477117

M/S FCL TECHNOLOGIES & PRODUCTS LTD — Appellant

Vs

C.C.E. INDORE — Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1358 / 2009 –SM[BR] dated 18.9.2009 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. INDORE
   MANIK BAGH PALACE, POST BOX NO. 10, INDORE 452001 (M.P.)
2. Adv. / Consult SHRI ARVIND ARORA ADV.
   M/S APPELLANTS;--------------

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)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No. 2, R.K. Puram,
NEW DELHI

COURT No. III

CENTRAL EXCISE APPEAL NO. 2729 of 2007-SM

[Arising out of Order-in-Appeal No. IND-I/123/2007 dated 20.6.2007 passed by the Commissioner (Appeals-I), Customs & Central Excise, Indore]

Dated of hearing/decision: 18th September, 2009

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?	No
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 Departmental authorities?	Yes

M/s. FCL Technologies & Products Ltd., Appellants

Vs.

CCE, Indore Respondent

Appearance:

Shri Arvind Arora, Advocate for the appellants;
Shri Sunil Kumar, JDR for the Revenue

Coram:

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

FINAL ORDER NO. 1358/2009 dated 8M

Per P.K. Das:

The appellants filed this appeal against imposition of penalty of Rs. 10,000/- under Rule 15 of Cenvat Credit Rules, 2004 read with Section 11AC of Central Excise Act, 1944.

2. The relevant facts of the case, in brief, are that the appellants are engaged in the manufacture of goods Polyester Chips, Printing Ink, Adhesive etc. classifiable under Chapter 39, 32 and 35 of the Schedule to the Central Excise Tariff Act, 1985. The appellants had purchased furnace oil from depot of IOCL and taken Cenvat credit on the basis of dealer's invoice issued by the IOCL. During audit, it was revealed that duty paid unit rate by the original manufacturer was lesser than that the unit rate of duty which was passed on by the dealer of IOCL to the appellants. Thus, there was an excess availment of credit of Rs. 1,05,033/- during the period April, 2002 to March, 2004. The appellants reversed the credit at the instance of the officers on 31.1.2007. The original authority disallowed the excess credit of Rs. 1,05,033/- and appropriated the amount as deposited by them. He also imposed penalty of equal amount under Rule 15 of Cenvat Credit Rules, 2002 read with Section 11AC of the Act along with interest. The Commissioner (Appeals) modified the adjudication order insofar as inadmissibility of credit of Rs. 1,05,033/- was set aside and directed the adjudicating

authority to pass a fresh order on merit after examining the documentary evidences, as to whether IOCL paid the excess amount of credit. It was also directed that the appellants could be also re-credit the said amount, if it is paid by IOCL. He also reduced the penalty to Rs. 10,000/-.

3. Learned Advocate on behalf of the appellants submits that in compliance of the order of the Commissioner (Appeals), the Dy. Commissioner of Central Excise by adjudication order No. 03/CEX/DEM/DC /2008 dated 21.1.2008 allowed the appellants to take re-credit of Rs. 1,03,055/- (it should be Rs. 1,05,033/-) in their Cenvat account. He submits that it is revealed from the said order that IOCL paid the duty and, therefore, penalty under Rule 15 of Rules read with Section 11AC of the Act could not be sustained. He submits that the duty was paid and, therefore, penalty under the said provisions cannot be imposable.

4. Learned JDR reiterates the findings of the Commissioner (Appeals). He submits that it is apparent from the order of the Commissioner (Appeals) that some invoices issued by Depot of IOCL are indicating the excise duty paid at the factory by IOCL and also the total duty payable by the IOCL with reference to the quantity purchased as per invoice. So, the appellants cannot take the excess credit. He further submits that IOCL subsequently paid the duty. Therefore, the Commissioner (Appeals) rightly reduced penalty after considering the contravention of rules.

5. After hearing both sides and on perusal of the records, I find that the appellants availed the credit on the basis of invoices issued by the depot of IOCL. The appellants took stand before the Commissioner (Appeals) that IOCL paid the excess amount of duty. The Commissioner (Appeals) remanded the matter to the adjudicating authority for verification. Deputy Commissioner by his order dated 21.1.2008 held as under:-

"I find that the differential duty payment particulars have been verified by the respective jurisdictional Superintendents, to the extent that the duty as shown in the invoices have been correctly paid, the Noticee is entitled for taking credit of that amount. Thus the Noticee is eligible for taking credit of differential duty paid by M/s. IOCL."

6. It is evident that the duty as shown in the invoices have been correctly paid by IOCL. The Commissioner (Appeals) reduced the penalty on the ground that the appellants are guilty of having taken excess credit than what was due to them, because differential duty involved was paid only at a letter stage by IOCL. Sub-rule (1) of Rule 15 of the said Rules provides that if any person takes Cenvat credit in respect of inputs or capital goods, wrongly or without taking reasonable steps to ensure that appropriate duty on the said input or capital goods has not been paid as indicated in the documents accompanied the input or capital goods or contravention of any of these rules in respect of input or

capital goods, then, all such goods shall be liable to confiscation and such person shall be liable to a penalty.

7. In the present case, it is revealed from the adjudication order dated 21.1.2008 that upon verification it is found that duty as shown in the invoices have been correctly paid. So, the penalty under Rule 15 of the Rules cannot be attracted. The contention of the learned JDR is that the amount in question was paid at a later stage. Rule 15 provides imposition of penalty in the case where duty has not been paid as indicated in the duty paying documents. In the present case, duty has been paid by IOCL and, therefore, imposition of penalty on the appellants is not justified.

7. In view of the above discussion, impugned order insofar as imposition of penalty is set aside. Appeal is allowed with consequential relief.

(Dictated & pronounced in the Open Court.)

(P.K. DAS)
MEMBER (JUDICIAL)

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