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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/1463/2006 – SM[BR] Date 06/11/2009

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

To :
C.C.E. JAIPUR I
N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME,
JAIPUR 302005.

C.C.E. JAIPUR I Appellant

Vs

M/S R.S. INDS. (RM) LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1402 / 2009 –SM[BR] dated 9.9.2009 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   M/S R.S. INDS. (RM) LTD.
   A-241-242 (B), ROAD NO. 6-D, VKI AREA, JAIPUR, RAJASTHAN
2. Adv. / Consult
   MR.K.K ANAND
   A-5,BASEMENT,LAJPAT NAGAR-III NEW DELHI-24

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)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Appeal No.E/1463 of 2006 of SM (BR)

[Arising out of common Order-in-Appeal No.9(MPM)CE/JPR-1/2006 dated 10.01.2006 passed by the Commissioner of Central Excise (Appeals-I), Jaipur]

Date of Hearing/ Decision:09.09.09

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, Jaipur-I ...Appellants
[Rep. by Shri I. Baig, SDR]

Vs.

M/s. R.S. Industries (RM) Ltd. ...Respondent
[Rep. by Shri Hemant Bajaj, Advocate]

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

Final Order No. 1402/2009 SM (Br) /Dated:09.09.2009

<u>Per P.K. Das:</u>

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

2. The relevant facts of the case, in brief, are that the respondents are engaged in the manufacture of Hot Re-rolled products and other articles

of Iron and Steel classifiable under Chapters 72 and 73 of the Schedule to the Central Excise Tariff Act, 1985. The respondents were paying duty under the Compounded Levy Scheme under Section 3 A of the Central Excise Act, 1944 upto 31.3.2000. By Board Circular No.522/18/2000 dated 31.03.2000, it was directed that Cenvat credit may be allowed in respect of stocks of input-materials, which were lying with the re-rolling mills and induction furnace units as on 1st April, 2000. The respondents filed declarations of the stocks of inputs as on 31.03.2000 and availed Cenvat credit. On 1.4.2000, the Central Excise Officers conducted stock verification. A show cause notice dated 12.02.2001 was issued proposing to demand a Cenvat credit of Rs.1,80,031/- availed by them wrongly during the month of April, 2000 in terms of Rule 57AH of the erstwhile Central Excise Rules, 1944 read with Section 11 A of the Central Excise Act, 1944 along with interest and to impose penalty. The Original Authority confirmed the demand of Rs.1,80,031/- along with interest and appropriated the amount of Rs.36,657/- as deposited by them and also imposed penalty of Rs.50,000/-. The Commissioner (Appeals) set aside the adjudication order. Hence, the Revenue filed this appeal.

3. Ld. SDR on behalf of the Revenue reiterates the grounds of appeal. He submits that the amount of Rs.36,657/- was not contested before the Commissioner (Appeals). Even that, the Commissioner (Appeals) set aside the said amount. He further submits that the credit was taken in terms of Board Circular dated 31.03.2000, wherein it is mentioned that, "Cenvat credit may be allowed in respect of stocks of

input materials, which are lying with the re-rolling mills and induction furnace units as on 1st April, 2000". He also submits that on 1.4.2000, the Central Excise Officers visited the respondent's factory and conducted stock verification. During stock verification, Furnace Oil and Ferro Silicon Manganese weighing 12035 Ltrs. and 18.402 M.T. respectively were not available in their factory premises and, therefore, they are not eligible to avail the credit of Rs.19,562/- and Rs.60,358/-. He further submits that the Commissioner (Appeals) erroneously proceeded on the basis of duty paying documents and totally overlooked that the said quantity of the materials were not lying at their factory as on 1.4.2000. He also submits that the contention of the respondent of filing two declarations have no relevancy, which creates doubt whether the said materials were lying at their factory or not on that date. He also submits that that the verification report was signed by the Authorized Signatory of the respondent and, therefore, it is for all the goods whether it is raw material or finished goods. Thus, it is clearly established that there was no stocks lying apart from the stock, as per the verification report.

4. Ld. Advocate on behalf of the respondent reiterates the findings of the Commissioner (Appeals). He submits that the respondent filed two declarations on 31.03.2000. One declaration was filed in respect of Furnace Oil, Ferro Silicon Manganese and the other declaration was for finished goods and raw materials e.g. Billets, ingots and raw materials for TLT Division. He submits that the Central Excise Officers during their visit on 1.4.2000, verified the stocks in respect of other declarations and

no discrepancy was found. It is his submission that the visiting officers did not verify the declaration for Furnace Oil and Ferro Silicon Manganese. It is contended that as revealed from verification report that visiting officers did not verify the stocks with records maintained by them in respect of inputs in question. He further submits that the respondent produced RG-23 A Part-I and Part-II registers along with duty paying documents in order to establish that the goods were lying at their factory, which was not considered by the Original Authority. It is his submission that the Commissioner (Appeals), after examining the records, set aside the demand of duty.

5. After hearing both the sides and on perusal of the records, it appears from the appeal filed by the Revenue that the appeal relates to in so far as setting aside the recovery of Cenvat credit for Rs.1,16,577/- (Rs.36,657/- + Rs.19,562/- + Rs.60,358/-) confirmed by the Original Authority and upheld penalties. The ld. Advocate fairly submits that the respondents are not contesting the amount of Rs.36,657.00. The other amounts relate to the credit availed on Furnace Oil and Ferro Silicon Manganese in terms of Board Circular No.522/18/2000 dated 31.03.2000. The relevant portion of the said Circular is reproduced below:-

> "4. It has also been decided that Cenvat credit may be allowed in respect of stocks of input materials, which are lying with the re-rolling mills and induction furnace units as on 1st April, 2000. However, the credit shall be allowed only on such quantity of stocks which is supported by duty paying documents. The re-rolling mills and induction furnace units may be advised that unless the duty paying documents are available with them, the Cenvat credit would not be

> admissible. Any credit wrongly taken would meet with the consequences prescribed under the Cenvat rules.
> 5..
> 6..
> 7. Necessary action may be taken by the field officers to ascertain the quantity of the stocks of finished goods, inputs and waste and scrap lying with the re-rolling mills and induction furnace units as on 1st April, 2000. Reliance may also be placed on the records maintained by such units in respect of the quantity of finished goods, inputs and waste and scrap lying in their stocks on 1st April, 2000."

6. On perusal of the above Circular, it is clear that the credit shall be allowed only in respect of such quantity of stocks, which were lying with the re-rolling mills and induction furnace as on 1.4.2000 and supported by the duty paying documents. It is directed to the field officers to ascertain the quantity of the stocks lying with the re-rolling mills as on 1.4.2000 and reliance may also be placed on the records maintained by the such units. In the present case, it appears from the adjudication order that the respondent contended that they filed two declarations on 31.03.2000. One declaration was meant for furnace oil and ferro silicon manganese and other declaration was for finished stocks and raw materials for TLT Division. It is contended that the other declaration was verified by the stock taking officer and no discrepancy was found.

7. The contention of the ld. Advocate on behalf of the respondent that the first declaration meant for furnace oil and ferro silicon manganese was not verified. It is also contended that the Original Authority has not given any findings on this issue. The contention of the ld. DR is that the two declarations have created the doubts that there is manipulation to

avail the irregular credit. On perusal of stock taking report dated 1.4.2000, it appears that the stock taking officer mentioned balance as per R.G.1 and as ascertained in respect of Angles/Channels/Joint, Bars & Rods, R.Bars, Waste and Scrap, TLT, Billets, Ingots. It is significant to note that the recorded balance of disputed inputs – Furnace Oil and Ferro Silicon Manganese were not mentioned in the Stock Taking Report. Thus, it appears that the stock taking officer had not verified the records of the said inputs.

8. On perusal of the adjudication order as well as grounds of appeal filed by the Revenue, there is no mention that the two declarations filed by the respondents would create the doubt of manipulation of record and, therefore, the submission of the ld. DR, at this stage, cannot be accepted. I find that the respondent produced the records in respect of the stocks before Commissioner (Appeals). The Board Circular clarified that the field officers must ascertain the stocks of inputs as well as reliance may also be placed on record maintained by the units. In any event, the respondent produced the records, which were also not considered by the Original Authority. In my view, the Original Authority should verify the records and stock taking reports in respect of these declarations. I have also noted that the respondent has not contested the demand of Rs.36,657/-, which is also set aside by the Commissioner (Appeals). So, the order of the Commissioner (Appeals) is not sustainable.

9. In view of the above discussions, the impugned orders in so far as admissibility of credit of Rs.1,16,577.00 against which Revenue filed

appeal, is set aside. The matter is remanded back to the Original Authority to examine the declaration along with records and stock taking reports in terms of the Board's Circular and to decide afresh in accordance with law. The appeal filed by the Revenue is allowed by way of remand.

Order dictated & pronounced in open court on 09.09.2009.

(P.K. Das)
Member (Judicial)

ckp.