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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/1456/2009 – SM[BR] Date **13/01/2011**

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

To :
M/S LORD KRISHNA POLY PLAST
PLOT NO 7, PATEL NAGAR, VILLAGE- KARDHAN
ROAD, AMBALA CANTT.

M/S LORD KRISHNA POLY PLAST Appellant

Vs

C.C.E. DELHI III Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 52 / 2011- **SM[BR]** dated 4.1.2011 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. DELHI III
UDYOG MINAR, UDYOG VIHAR,
VANIJYA NIKUNJ, PHASE V,
GURGAON - 122016 (HARYANA)
2. Adv. / Consult
MR.R.K.PHILIPS
M/S SIRMACS CONSULTANCY SERVICES, UG-3,PRAGATI
TOWER, 26, RAJENDRA PLACE NEW DELHI
3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications. Customs. Excise. I.P. Estate. New Delhi
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
9. Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi - 110005
10. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
13. Office Copy
14. Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. III

Excise Appeal No. 1456 of 2009-SM(BR)

[Arising out of Order-in-Appeal No. 45/ANS/PCK/2009 dated 16.2.2009 passed by the Commissioner of Central Excise (Appeals), Delhi III, Gurgaon,]

For approval and signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)

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1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? : Yes

2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : Yes

3. Whether Their Lordships wish to see the fair copy of the Order? : Seen

4. Whether Order is to be circulated to the Departmental authorities? : Yes

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M/s. Lord Krishna Poly Plast — Appellants

Vs.

Commissioner of Central Excise
Delhi III, Gurgaon — Respondent

Appearance:

Shri R.K. Philips, Advocate for the Appellants
Shri Anil Khanna, SDR for the Respondent

Date of Hearing/decision : 04.01.2011

final **ORAL ORDER NO. 52/2011 SM (Br)**

Per M. Veeraiyan:

This is an appeal against the order of the Commissioner (Appeals) No. 45/ANS/PCK/2009 dated 16.2.09.

2. Heard both sides.

3. The appellants is a manufacturer of polyethelene bags and were availing Cenvat credit on inputs and capital goods. During the year 2005-2006, the appellant received a generator set and out of total duty of Rs.56,824/-, took credit of Rs.28,412/- in September 2005 and the balance of credit was taken by them in 2006-2007. On 31.10.06, they have filed income tax return for the financial year 2005-2006 claiming the depreciation during the said year. However, they filed revised return on 31.3.07 without claiming the depreciation and paid the differential income tax. Original authority dropped the proceedings on show cause notice holding that the party has filed revised return and in fact did not avail depreciation. On appeal by the department, Commissioner (Appeals) set aside the order of the original authority and allowed the appeal of the Revenue.

4. Learned advocate submits that it was by mistake that they have claimed the depreciation in the return filed on 31.10.06. This has happened due to communication gap between officers who maintained

excise records and the person who has filed income tax return. Having realised the mistake on being pointed out by the department they have promptly filed the revised income tax return and paid the differential income tax involved without availing depreciation. Therefore, he submits that no benefit of depreciation has been allowed and, therefore, the credit on capital goods taken by them is regular. He seeks setting aside the order of the Commissioner (Appeals) and restoration of the order of the original authority. He relies on the decision of the Tribunal in the case of CCE Surat vs. Utsav Silk Mills reported in [2009 (245) ELT 246 (Tri-Ahmd)] and decision in the case of Fitcast Founders & Engineers Ltd. vs. CCE Ahmedabad reported in [2009 (247) ELT 728 (Tri-Ahmd)] and the decision in the case of CCE Coimbatore vs. Jaya Mills Ltd. reported in 2009 (238) ELT 189 (Tri-Chennai)].

5. Learned SDR supports the order of the Commissioner (Appeals) and relies on the decision of the Hon'ble High Court of Karnataka in the case of CCE Bangalore vs. Suprajit Engineers Ltd. reported in [2010 (253) ELT 369 (Kar)].

6. I have carefully considered the submission from both sides and perused the records. The decision in the case of Suprajit Engineering Ltd. relates to a case where the appellant took the 50% of Cenvat credit and utilised the same for paying the duty during the year of procurement of capital goods and also took depreciation for the balance

of 50 % of the Cenvat credit not availed in that year and took not-availed portion of 50% of the Cenvat credit during the next financial year. The facts of the said case are clearly distinguishable from the facts of the present case. On the other hand, the decisions relied upon by the learned advocate relate to cases where the parties who have taken credit, initially claimed depreciation with the income tax department and subsequently, filed returns without claiming depreciation and the Tribunal upheld the credit availed on the capital goods. In view of the above, the facts of the present case being substantially same as those in cases Jaya Mills Ltd., Fitcast Founders and Engineers Ltd., and Utsav Silk Mills, I find that there is ~~no~~ merit in the appeal.

7. In view of the above, the order of the Commissioner (Appeals) is set aside and the order of the original authority is restored.

(M. Veeraiyan)
Member(Technical)

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