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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/957 /2009 – SM [BR]   Date **21/01/2011**

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

To :
M/S MANGAL ELECTRICALS INDUSTRIES
C-61A, ROAD NO. 1C, V.K.I. AREA, JAIPUR.

M/S MANGAL ELECTRICALS INDUSTRIES   Appellant

Vs

C.C.E. JAIPUR I   Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 57 / 2011 - **SM[BR]** dated 21.12.2010 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. JAIPUR I
N.C.R.BUILDING, STATUE
CIRCLE, "C" SCHEME, JAIPUR
302005.
2. Adv. / Consult SHRI BIPIN GARG ADV.
B-1/1289-A, VASANT KUNJ 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 & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. III
Excise Appeal No. 957 of 2009 (SM)

[Arising out of the Order-in-Appeal No. 51-52 (DK) CE/JPR-I/2009 dated 06/03/2009 passed by The Commissioner (Appeal), Central Excise, Jaipur.]

For Approval and signature :
Hon'ble Shri Rakesh Kumar, Member (Technical)

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 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 Department Authorities?	:

M/s Mangal Electricals Industries Appellant

Versus

CCE, Jaipur Respondent

Appearance

Ms. Sukriti Das, Advocate – for the appellant.

Shri R.K. Gupta, Authorized Representative (DR) – for the respondent.

CORAM : **Hon'ble Shri Rakesh Kumar, Member (Technical)**

DATE OF HEARING : 21/12/2010.

Final Order No. 57/2011 SM (B) Dated :

Per. Rakesh Kumar :-

The facts leading to this appeal are, in brief, as under.

1.1 The appellant are engaged in the manufacture of Transformers, laminations (core), ACSR conductors and XLPX Insulated cables chargeable to Central Excise Duty. They also availed the facility of Cenvat credit of duty paid on inputs and capital goods used in or in relation to the manufacture of finished products. On 15/12/06, the Jurisdictional Central Excise officers made the surprise visit to the appellant's factory and checked the stock of cenvated inputs as well as capital goods. It was found that certain capital goods/machinery namely Transformer, Extruder and Transformer core winding Machine, in respect of which total capital goods Cenvat credit amounting to Rs. 7,42,329/- (Rupees Seven Lakh Forty Two Thousand Three Hundred Twenty Nine) had been taken, were not their in the factory at all. Inquiry was made with Shri Rahul Mangal, Partner of the appellant and his statement was recorded on that day under Section 14 of the Central Excise Act, wherein he admitted that said capital goods were neither installed in the factory nor in the said premises and that these items of capital goods are actually installed in another factory of the appellant situated at E-54, Road No. 5, VKIA, Jaipur which is not registered with the Central Excise Department. It, thus, appeared that the appellant have wrongly availed the Cenvat credit amounting to Rs. 7,42,329/- in respect of above-mentioned capital goods, which though procured by the appellant, were not installed in their factory where the Cenvat credit in respect of such capital goods had been taken but had been actually installed in another factory of the appellant. In view of this, a show cause notice dated 16th July 2007 was issued for recovery of wrongly taken capital goods Cenvat credit alongwith interest and imposition of penalty on the appellant firm as well as its partner Shri Rahul Mangal. The show cause notice was adjudicated by the Joint Commissioner, vide order-in-original No. 23/2008 dated 26th June 2008 by which the Cenvat credit demand of Rs. 7,42,329/- was confirmed alongwith interest under Rule 14 of the Cenvat Credit Rules, 2004 readwith

Section 11A (1) of the Central Excise Act, 1944 and Section 11AB ibid and beside this while penalty of Rs. 7,42,329/- was imposed on the appellant under Rule 15 (2) of Cenvat Credit Rules, 2004 readwith Section 11AC of Central Excise Act, 1944, penalty of Rs. 80,000/- was imposed on Shri Rahul Mangal, Partner of the appellant firm under Rule 15 of the Central Excise Rules, 2004. The appellant firm as well as partner Shri Rahul Mangal filed appeal before the Commissioner (Appeals) against the order of the Joint Commissioner and the Commissioner (Appeals) vide order-in-appeal dated 6th March 2009 upheld the Cenvat credit demand alongwith interest as well as penalty on the appellant firm, but set aside the penalty of Rs. 80,000/- imposed on Shri Rahul Mangal, Partner of the appellant firm. It is against this order of the Commissioner (appeals) that the appellant firm has filed this appeal.

2. Heard both the sides.

2.1 Ms. Sukriti Das, Advocate, the learned Counsel for the appellant, pleaded that the capital goods, in question, after being received in the appellant's factory at C-61 (A), VKI

Area, Jaipur, had been sent under challan to their other unit in the same industrial area located at E-54, Road No. 5, VKIA, Jaipur, that both the units are owned by the appellant and, therefore, the appellant were under impression that they could avail the Cenvat credit, that the unit at E-54, Road No. 5 was doing the job work for the main unit and, therefore, it was permissible for the appellant to avail the Cenvat credit under Rule 4 (5) (a) of the Cenvat Credit Rules, 2004 and that, in view of this, the Cenvat credit, in question, has been correctly availed and hence neither any amount of Cenvat credit is recoverable and as such, Commissioner (Appeals)'s order confirming the Cenvat credit demand is not correct. She also pleaded that though the sending of the cenvated capital goods under challan No. 224 dated 14th December 2006 under Rule 4 (5) (a) of the Cenvat Credit Rules, 2004 was not informed to the officers at the time of their visit to the factory on 15/12/06, this fact was brought to the notice of the department in course of reply to the show cause notice and that, subsequently the capital goods were received back into the factory vide challan No. 943 dated 7th March 2007. She also pleaded that the entire disputed amount of Cenvat credit had been reversed at the time of visit of the officers.

2.2 Shri R.K. Gupta, the learned Departmental Representative, defending the impugned order pleaded that all the three items had been purchased by the appellant during August 2005 to October 2005 period, that is, about a year before the officer's visit to the factory, that as per the statement of Shri Rahul Mangal, Partner of the appellant firm these items of capital goods had never been installed in the factory at C-61 C, VKI Area, Jaipur, but had been installed in the other unit at E-54, Road No. 5, VKI Area, Jaipur, that while the appellant claim that the capital goods, in question, had been sent under a challan dated 14th December 2006 to the other unit, at the time of officer's visit to the factory on 15th December 2006, Shri Rahul Mangal never told the officers that the cenvated capital goods had been sent to other unit for use in job work, that the appellant came up with the plea regarding sending of the capital goods under challan No. 224 dated 14th December 2006 only in the course reply to show cause notice from which it is clear that this challan has been fabricated afterwards and it is only an afterthought, that the unit where the capital goods were installed was an unregistered unit, not paying any excise duty and, therefore, there was no question of any Cenvat credit availment by that unit and that this is a clear case where the appellant, in order to wrongly avail the Cenvat credit on the capital goods, which were actually meant for their unregistered unit, have shown the receipt of capital goods in their registered unit. He, therefore, pleaded that the Commissioner (Appeals) has rightly upheld the Cenvat credit demand and imposition of penalty.

3. I have carefully considered the submissions from both the sides and perused the records.

4. The undisputed facts are that the appellant have two units, first unit having Central Excise Registration at C-61, VKI Area, Jaipur where they manufactured Transformers, lamination (core), ASCR conductors and XLPX Insulated cables. The other unit of the appellant located at E-54, Road No. 5, VKI Area, Jaipur is an unregistered unit not paying any Central Excise duty. There is no dispute about the fact that the appellant in respect of their unit at C-61, VKI Area, had taken

Cenvat credit amounting to Rs. 7,45,329/- in respect of three items of capital goods – Transformer, Extruder, Transformer core winding Machine, which had been purchased by them during August 2005 to October 2005 period. There is also no dispute about the fact that at the time of officer's visit to the factory on 15/12/2006, these items of capital goods, in respect of the Cenvat credit had been taken, were neither installed in the factory nor was lying in loose condition and Shri Rahul Mangal, Partner of the appellant firm present at that time, in his statement recorded under Section 14 of the Central Excise Act, 1944 stated that these capital goods were not installed in this factory and that the same were installed in the unit located at E-54, Road No. 5, VKI Area, which is unregistered unit and that, this was done due to shortage of space. At that time, he never told the departmental officers that the cenvated capital goods had been sent to the other unit for the purpose of job work under Rule 4 (5) (a) of the Cenvat Credit Rules, or that the capital goods would be brought back to the factory. In view of this, the appellant's plea at the time of reply to the show cause notice that the capital goods, in question, had been sent to the other unit under challan No. 224 dated 14^{th}

December 2006, that is, only a day before the officer's visit to the unit is difficult to accept. From the circumstances of the case, it is clear that since the unit at E-54, Road No. 5, VKI Area, being is unregistered unit, not duty paying, the same would not have been able to take capital goods Cenvat credit in respect of the capital goods installed there and obviously for this reason only, the receipt of the capital goods has been shown in the unit at C-61, VKI Area and Cenvat credit has been availed while the capital goods were actually meant for as installed in the other unit. In view of this, the Cenvat credit has been rightly denied and penalty has been rightly imposed. I do not find any infirmity in the impugned order. The appeal is rejected.

(Dictated and pronounced in open court.)

(Rakesh Kumar)
Member (Technical)

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