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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 **10/06/2011**

Appeal No. **E/2972/2009 – SM[BR]**

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

To :
M/S GRASIM INDUSTRIES LTD.
(CHEMICAL CIVISION), BIRLAGRAM, NAGDA (M.P.) — Appellant
Vs
M/S GRASIM INDUSTRIES LTD. — Respondent

C.C.E. INDORE

I am directed to transmit herewith a certified copy of **Final order No. 307 / 2011 –SM[BR]** dated 4.5.2011 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. INDORE
MANIK BAGH PALACE, POST
BOX NO. 10, INDORE 452001 (M.P.)

2. Adv. / Consult
MR.K.K ANAND
A-5,BASEMENT,LAJPAT NAGAR-III NEW DELHI-24

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. Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi -
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Harvana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
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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. 2972 of 2009 (SM)

[Arising out of the Order-in-Appeal No.166/CE/IND/2009 dated 07/08/2009 passed by The Commissioner (Appeals), Central Excise & Service Tax, Indore.]

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?	:

Grasim Ind. Ltd. Appellant

Versus

CCE, Indore Respondent

Appearance

Shri K.P.Singh, SDR – for the respondent.

Shri Saurabh Yadav, Advocate– for the appellant.

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

DATE OF HEARING / DECISION : 04/05/2011.

Final Order No. 307/2011 SM(BR) Dated : ____________

Per. Rakesh Kumar :-

In this case, the appellant are manufacturer of various products such caustic soda, liquid chlorine, bleaching powder, hydrogen etc. They had imported some capital goods and had taken Cenvat Credit of additional custom duty in respect of the same. Subsequently on account of defect, the capital goods were exported to the supplier without paying any duty under LUT-I. There is no dispute that the goods have been returned after the necessary repairs. Department is of the view that at the time of sending, the Cenvet credit avails goods abroad for repair, the Cenvat Credit taken in respect of same should have been reversed. It is on this basis that the Assistant Commissioner vide Order-In-Original dated 29.12.08 confirmed the Cenvat Credit demand of Rs.2,03,495/- along with interest and imposed penalty of equal amount. On appeal to Commissioner(Appeals), this order of the Assistant Commissioner was upheld. Against this order, the present appeal has been filed.

2. Heard both the sides.

3. Shri Saurabh Yadav, Ld. Advocate for appellant pleaded that the capital goods in respect of which Cenvat Credit had been taken have been exported out of India to the supplier without payment of duty

under bond, that the goods had been sent abroad for repairs, that since the goods had been exported under bond without payment of duty Cenvat Credit was not required to be reversed, that there are Board's instructions No.345/2000-TRU dated 29.08.2000 to this effect, that this Tribunal in the case of **Zydex Industries vs. CCE, Vadodara reported in 2007(219)/ELT/ 601(Tri.Ahmd.)** has held that in such cases, the Cenvat Credit is not required to be reversed and that in view of this, the impugned order is not correct.

4. Shri K.P.Singh, Ld. DR defended the impugned order by reiterating the findings of the Commissioner(Appeals) and emphasized that the Board's instructions dated 29.08.2000 were in respect of Rule 1 of the then Rule 57AB of Central Excise Rule, 1944 and the same is not applicable to the present provisions regarding Cenvat Credit. He also emphasized that the provisions Rule 6(6) of Cenvat Credit Rules regarding non-reversal of Cenvat Credit in respect of goods exported under bond are applicable in respect of the goods manufactured by assessee while this is not so, in this case. He therefore pleaded that there is no infirmity in the impugned order.

5. I have carefully considered the submissions from the Departmental Representative and perused the records.

6. In this case, at the time of installation of imported goods in the factory, Cenvat Credit of additional custom duty paid have been taken. As per the provisions of the Cenvat Credit Rules, if such Cenvet credit availed capital goods are cleared as such, i.e., as capital goods, an

amount as prescribed in the Rules is required to be paid. But this provision is in respect of the clearances to domestic buyers. In this case, the capital goods had been exported to the supplier for the purpose of repairs and the same had been exported under bond. In my view, the provisions of Rule 6(6) of Cenvat Credit Rules would be applicable in such cases also where some Cenveted capital goods are cleared for export under bond without payment of duty, ~~And~~ in such cases, the Cenvet Credit would not require to be reversed. In terms of Board's Circular dated 29.08.2000 in such a situation, Cenvat Credit was not required to be reversed. Moreover, I also find that as observed in the Stay Order No.423/2010-SM, dated 01.09.10 passed in this matter, the goods have since been re-imported. In view of this position, in my view, there would be no justification for reversal of Cenvat Credit. In view of this, the impugned order is ~~therefore,~~ not sustainable. The same is set aside. The appeal is allowed.

(Dictated and pronounced in open court.)

(Rakesh Kumar)
Member (Technical)

RK-I