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USTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

SINGLE MEMBER APPEAL BRANCH

Appeal No. **E/2971/2009 – SM[BR]** Date **14/06/2011**

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

To :
M/S KEDARA PLASTICS,
F-46, RIICO INDUSTRIAL AREA, KALADERA, JAIPUR.

M/S KEDARA PLASTICS, Appellant

Vs

C.C.E. JAIPUR I Respondent

I am directed to transmit herewith a certified copy of **Final order No. 315 /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. JAIPUR I
N.C.R.BUILDING, STATUE
CIRCLE, "C" SCHEME, JAIPUR
302005.

2. Adv. / Consult MS. NEHA GULATI ADV.
R-163,SECOND FLOOR G.K. PART-I
NEW DELHI-48.

3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications. Customs. Excise. I.P. Estate. New
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 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. 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. 2971 of 2009 (SM)

[Arising out of the Order-in-Appeal No.201/DK/CE/JPR-I/2009 dated 21/08/2009 passed by The Commissioner (Appeals), Central Excise & Service Tax, Chandigarh.]

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?	:

Kedara Plastics — Appellant

Versus

CCE, Jaipur-I — Respondent

Appearance

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

Ms. Neha Gulati, Advocate– for the appellant.

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

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

Final Order No. 315/2011 SM(BR) Dated : ____________

Per. Rakesh Kumar :-

The appellant are manufacturer of PVC pipes chargeable to Central Excise duty and they availed Cenvat Credit of duty paid on inputs and capital goods used in or in relation to their manufacture of final product. In December, 1996, the appellant brought some duty paid capital goods and availed capital goods Cenvat Credit in respect of same. Those capital goods after being continuously used for about 10 years were sold in June, 2007. The goods were sold as machinery and at that time the appellant paid an amount equal to the duty on the transactions value. The department is of the view that in view of the provisions of Rule 3(5) of Cenvat Credit, 2004, the appellant should have reversed the amount of Cenvat Credit originally taken in respect of those capital goods in December, 1996. It is on this basis that after issue of show cause notice, the jurisdictional Deputy Commissioner vide Order-In-Original dated 05.12.08 confirmed demand of an amount of Rs.1,28,804/- along with interest under Rule 3(5) of Cenvat Credit Rules, 2004 and imposed penalty of equal amount on them under Rule 15 of Cenvat Credit Rules. Commissioner(Appeals) vide Order-In-Appeal dated 20.08.09 dismissed the appeal. Against this order of the Commissioner (Appeal), the present appeal has been filed.

2. Ms. Neha Gulati, Advocate for appellant pleaded that the issue involved in this case is squarely covered by the decision of Tribunal in the case of Greenply Industries Ltd. vs. CCE, Jaipur, reported in 2010(259)ELT/103/Tri.Del., CCE, Kanpur vs. Geeta Indus. P.Ltd. reported in 2009(95)/RLT/622(CESTAT, Delhi) and CCE, Chandigarh vs. Raghav Alloys P.Ltd. reported in 2009(242)ELT/ 124, that these judgements of the Tribunal are based on the judgements of Hon'ble Bombay High Court in the case of Cummins India Ltd. vs. CCE, Pune-III reported in 2009(234)/ELT/A120 and in view of this, the impugned order is not correct.

3. Shri K.P.Singh, Ld. SDR assailed the impugned order by reiterating the findings of the Commissioner(Appeals) in the impugned order and emphasized that the capital goods had not been sold as scrap, but had been sold as capital goods, that at time of sale, the goods were identifiable as capital goods and hence this has to be treated as clearance of Cenvet credit availed capital goods as such, that during the period of dispute, in terms of provisions of Rule 3(5) of Cenvat Credit Rules in case of removal of Cenveted capital goods as such the Cenvat Credit originally taken was required to be reversed and there was no provision for reversal of Cenvat Credit based on the period for which the capital goods have been used and that in view of this, there is no infirmity in the impugned order.

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

5. This issue involved in this case stands decided against the respondent by a Division Bench of this Tribunal in the case of Greenply Industries Ltd. vs. CCE, Jaipur (supra) wherein it has been held that in such cases of removal of Cenvated capital goods after use for some period, payment of the amount equal to duty on transaction value is sufficient and the reversal of Cenvat Credit originally taken is not required. I find that the same view has taken by the Tribunal in the case of Cummins India Ltd. vs. CCE, Pune-III reported in 2007(219)ELT-911 observing that if in case of removal of old and used capital goods, the reversal of Cenvat Credit originally taken is ~~unsustainab~~le insisted, it would defeat the very purpose of Cenvat Credit facility in respect of capital goods. This judgement of the Tribunal has been upheld by Hon'ble Bombay High Court vide judgement reported in CCE, Pune vs. Cummins India Ltd. (supra). Same view has been taken by the Tribunal in the case of CCE, Kanpur vs. Geeta Industries P.Ltd. (supra) and CCE, Chandigarh vs. Raghav Alloys P.Ltd. which has been upheld by Hon'ble Madras High Court vide judgement in the case of Salem vs. Ragini Mills (Tr.) 2011(264)ELT-376(Mad.)

6. In view of this, the impugned order is not sustainable. The same is set aside. The appeal is allowed.

(Dictated and pronounced in open court.)

(Rakesh Kumar)
Member (Technical)

RK-I