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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/2007/2009 – SM[BR] E/ CO/ 7 /2009-SM[BR]** Date **29/06/2011**

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

To :
C.C.E. DELHI III
UDYOG MINAR, UDYOG VIHAR, VANIJYA NIKUNJ,
PHASE V, GURGAON - 122016 (HARYANA)

C.C.E. DELHI III Appellant

Vs

M/S SONASOMIC LEMFORDER COMPONENTS LTD., Respondent

I am directed to transmit herewith a certified copy of **Final order No. 346 / 2011-SM[BR]** dated 22.6.2011 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 SONASOMIC LEMFORDER COMPONENTS LTD.,
SONA ENCLAVE, NH-8,
GURGAON (HARYANA)

2. Adv. / Consult
NONE:-------------------

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.

COURT NO. II

Date of Hearing : 22.6.2011

Excise Appeal No. 2007 of 2009-SM with Cross Objection No. 07 of 2009

[Arising out of the Order-in-Appeal No. 105/ANS/GGN/2009 dated 9.4.2009 passed by the Commissioner of Central Excise (Appeals), Gurgaon]

Coram:

Hon'ble Mr. Mathew John, Member (Technical)

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	Yes
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
3.	Whether their Whether their Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	No

CCE, Gurgaon — Appellant

Vs.

M/s Sonasomic Lemforder Components — Respondent

Appearance:

Appeared for Appellant : Ms. Renu Jagdave, SDR
Appeared for Respondent : None

CORAM: Hon'ble Mr. Mathew John, Member (Technical)

Final Order No. 346/2011 SM dated............

Per Mathew John:

The Respondent is engaged in the manufacture of automotive cold forgings and motor vehicle parts falling under Tariff Heading 7326 and 8708 of the Central Excise Tariff Act, 1985 and are availing the Cenvat credit under Cenvat Credit Rules, 2004. During 2004-2005 and 2005-2006, they had paid a sum of Rs.62,50,389/- to their collaborators namely M/s Somic, Japan and Lemforder, Germany as royalty. They were liable to pay Service Tax on this amount as the recipient of services rendered by a party located abroad. Initially they did not pay such Service Tax. When the liability was pointed out during audit, they paid the tax immediately. However, they took Cenvat credit of the amount. The Revenue made out a case that the service involved is not an input for manufacture of their final product and could not qualify as an input service as per Rule 2(l)(ii) of the Cenvat Credit Rules, 2004. Further, Revenue also had a case that the Respondent had taken credit based on the TR-6 challan under which they paid tax. It is the argument of the Revenue that TR-6 challan was not a valid document specified under Rule 9 of Cenvat Credit Rules 2004, prior to 16.6.2005. A Show Cause Notice in the matter was issued to the Respondent. In the Adjudication order, the Adjudicating Authority concluded that the service in question is input service used in the manufacture of their final product. However, the Adjudicating Authority concluded that TR-6 challan is not a valid document on which they could take credit. Accordingly, he disallowed the credit of Rs.6,81,953/- and also imposed a penalty equal to the same amount under Section 11AC of the Central Excise Act, 1944.

2. Aggrieved by the order, the Respondent filed an Appeal with the Commissioner (Appeals). The Commissioner (Appeals) vide his order dated 9.4.2009 relied on the decision of the Tribunal in Order No. A-1358 to 1361/2007/WZB/C-IV(SMB) dated 5.9.2007 (STR 609) in the case of CCE, Goa Vs. ESSEL Pro Pack Ltd. and decided that credit can be taken on TR-6 challan and accordingly allowed the Appeal filed by the Respondent. Aggrieved by the order of the Commissioner (Appeals), Revenue has filed this Appeal. In this Appeal, Revenue is contesting both the issues, they say intellectual property services is not an input services for manufacture of the final products and that TR-6 challan is not a valid document for taking credit.

3. Heard arguments of DR and perused the record.

4. I do not find any merit in the argument that technical know-how for which royalty has been paid is not an input service for manufacture of final product because products with required quality could not have manufactured without technical know-how. If it is so possible they would not have been incurring such expenditure. There is no need for any elaborate discussion on this issue.

5. In the matter whether credit could be taken on the strength of TR6 challan during the period prior to 15.6.05, there is already a

decision of the Tribunal which is quoted by the Respondent (para 2 above). Further, it is to be noted that this is a case where the Respondent is paying tax as a recipient of service. So naturally the invoice issued by the foreign collaborators would not show the service tax element. So invoice which is the normal document against which Cenvat credit is to be taken is not applicable to this situation. The claim for Cenvat credit being a substantial right it cannot be denied on the basis of procedures which cannot be implemented in the facts of the case. So, respectfully following the decision of the Mumbai Bench cited supra, I hold that there is no merit in the argument of Revenue on this count either.

6. Accordingly, Revenue's Appeal fails on both the counts and is rejected. Accordingly, cross-objection filed by the Respondent also is disposed of.

(Pronounced in open Court)

(Mathew John)
Member (Technical)

RM