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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/3220/2009 – SM[BR]** Date **07/07/2011**

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

To :
M/S KRISHNA MARUTI LTD.
PLOT NO. 48, SECTOR-3, IMT MANESAR, GURGAON,
HARYANA.

M/S KRISHNA MARUTI LTD. Appellant
Vs
C.C.E. DELHI III Respondent

I am directed to transmit herewith a certified copy of **Final order No. 384 /2011-SM[BR]** dated 1.6.2011 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(SM Appeal Branch)

Copy to :

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

2. Adv. / Consult SHRI V.LAKSHMIKUMARAN ADV.
B-6/10, SAFDARJUNG ENCLAVE NEW DELHI-29.

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. IV
Excise Appeal No. 3220 of 2009 (SM)

[Arising out of the Order-in-Appeal No. 251/MA/GGN/2009 dated 11/09/2009 passed by The Commissioner (Appeals), Central Excise, Delhi – III, Gurgaon.]

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 Krishna Maruti Ltd. — Appellant

Versus

CCE, Delhi – III — Respondent

Appearance

Shri Hemant Bajaj, Advocate – for the appellant.

Mrs. Rimjhim Prasad, Authorized Representative (SDR) – for the respondent.

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

DATE OF HEARING : 01/06/2011.

Final Order No. 384/2011 SM (Br) Dated : ____________

Per. Rakesh Kumar :-

The point of dispute in this appeal is as to whether the service of insurance for their employees working in the factory can be treated as input service under Rule 2 (l) of the Cenvat Credit Rules, 2004 and whether the Cenvat credit of Service Tax paid on the insurance service availed would be available to the appellant. The department, being of the view that this service is not input service, issued a show cause notice dated 14/5/08 for recovery of allegedly wrongly taken Cenvat credit amounting to Rs. 3,56,790/- for the period from April 2006 to March 2007 by invoking extended period under proviso to Section 11A (1) of Central Excise Act, 1944 and also for imposition of penalty on the appellant under Section 11AC ibid. The Assistant Commissioner vide order-in-original dated 31st December, 2008 confirmed the Cenvat credit demand alongwith interest and imposed penalty of equal amount on the appellant. However, on appeal to Commissioner (Appeals), the Commissioner (Appeals) by the impugned order-in-appeal, while upholding the Cenvat credit demand alongwith interest in respect of insurance service, set aside the penalty under Section 11AC observing that the dispute in this case arise out of interpretation of Rules and there is no justification for imposition of penalty on the appellant. Against this order of the Commissioner (Appeals), the present appeal has been filed.

2. Heard both the sides.

2.1 Shri Hemant Bajaj, Advocate, the learned counsel for the appellant, pleaded that the issue on merits is covered in their favour by the Tribunal's judgment in the case of **CCE, Raipur vs. Raipur Rotocast Ltd.** reported in **2010 (18) S.T.R. 466 (Tri. – Del.)**, wherein it was held that Cenvat credit demand on transit insurance, group personnel accident insurance and group health insurance for the company employees is covered by the definition of 'input service', that irrespective of the merits of the case, the entire demand is time barred as while the period of demand is from April 2006 to March 2007, the show cause notice was issued on 15th May 2008 and there is no justification for invoking extended period under proviso to Section 11A, that the Commissioner (Appeals) in para 11 of the order has given a finding that the dispute in this case arises out of interpretation of rules and, therefore, there is no justification for imposition of penalty on the appellant, that since the elements for imposition of penalty under Rule 15 (2) of Cenvat Credit Rules readwith under Section 11AC of Central Excise Act, 1944 are identical to the elements necessary for invoking extended period under proviso to Section 11A (1) of Central Excise Act and since in view of the Commissioner (Appeals)'s observations in para 11 of the impugned order, there is no element of collusion, fraud, wilful misstatement or suppression of facts or contravention of any provisions with intent to evade the payment of duty, the extended period is not available to the Department and hence the demand is time barred. He, therefore, pleaded that the Commissioner (Appeals)'s order upholding the demand of Rs. 3,56,790/- in respect of insurance services is not correct.

2.2 Mrs. Rimjhim Prasad, the learned Departmental Representative defended the impugned order by reiterating the findings of the Commissioner (Appeals) and pleaded that the Cenvat credit demand is not time barred.

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

4. In this case, the duty demand would be sustainable only if the extended period under proviso to Section 11A (1) of the Central Excise Act, 1944 is available to the department for which the elements as prescribed in this proviso – fraud, collusion, wilful misstatement, suppression of facts, contravention of the provisions of the Central Excise Act or the Rules made thereunder with intent to evade the payment of duty is there – otherwise the extended period cannot be invoked. However, for imposition of penalty under Section 11AC the same elements are required and on this issue, the Commissioner (Appeals) has given a clear finding that there is no justification for imposition of penalty under Section 11AC as the dispute in this case arise out of interpretation of Rules. When the elements for imposition of penalty under

Section 11AC are not present, the extended period under proviso to Section 11A (1) cannot be invoked, as, as discussed above, the elements for invoking extended period under proviso to Section 11A (1) and elements required for imposing penalty under Section 11AC are identical. In view of this, irrespective of the merits of this case, the Cenvat credit demand is time barred and, hence, the impugned order upholding the duty demand is not sustainable. The same is set aside. The appeal is allowed.

(Dictated and pronounced in open court.)

(Rakesh Kumar)
Member (Technical)

PK