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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 26/07/2011

Appeal No. **E/1833/2009 – SM[BR]**

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

To :
M/S ORIENT PAPER MILLS
P.O.-AMLAI PAPER MILLS, DISTT. SHAHDOL
(MP)484117

Appellant

Vs

M/S ORIENT PAPER MILLS

Respondent

C.C.E BHOPAL

dated 23.6.2011

I am directed to transmit herewith a certified copy of **Final order No. 431 / 2011-SM[BR]** 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 BHOPAL
HOSHANGABAD ROAD, 48,
ADMINISTRATIVE AREA, AREA
HILLS, BHOPAL (M.P.) 462011

2. Adv. / Consult SHRI K.K. ANAND ADV.
A-103, DEFENCE COLONY 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 (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. 1833 of 2009 (SM)

[Arising out of the Order-in-Appeal No. 171/BPL/2009, dated 30.03.2009 passed by The Commissioner (Appeals), Bhopal.]

For Approval and signature :

Hon'ble Shri M.V.Ravindran, Member (Judicial)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	:	No
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 Lordships wish to see the fair copy of the order?	:	Seen
4.	Whether order is to be circulated to the Department Authorities?	:	Yes

Orient Paper Mills — Appellant

Versus

CCE, Bhopal — Respondent

Appearance

Shri Sourabh Yadav, Advocate - for the appellant.
Shri S.K.Bhaskar, DR – for the respondent.

CORAM : **Hon'ble Shri M.V.Ravindran, Member (Judicial)**

DATE OF HEARING / DEICISION : 23/06/2011.

Final Order No. 431/2011 SM (BR) Dated : ________

Per M.V.Ravindran

This appeal is filed by the appellant against the Order-In-Appeal No.171/BPL/2009, dated 30.03.2009.

2. The relevant facts of the case is that the appellant herein are manufacturer of paper and paperboard.

3. The appellant also manufactures paper and paperboard, produces electricity with the help of generator and the electricity so produced is utilized in the manufacturing of paper and paperboard and is also supplied to the residential colony/guesthouse/schools/ hospitals etc. The authorities issued Show Cause Notice for reversal of proportionate amount of credit as inputs, i.e., fuel which was gone into the electricity which was supplied to residential colony/ guesthouse/ schools/ hospitals etc. The appellant defended such demand. Adjudicating authority did not agree with the contentions raised and confirmed the demand of the reversal of Rs.21,437/- with interest and also imposed penalty of Rs.2,000/-. Aggrieved by such an order, the appellant preferred an appeal before the first appellate authority. The first appellate authority did not agree with the contention of the appellant and upheld the Order-In-Original.

4. Ld. Counsel would submit that the residential colony/ guesthouse/schools/hospital, lights, fittings equipments or the banquet halls should be considered requirement of business. He would submit that for this purpose, he refers the judgement of Hon'ble Supreme Court reported in 1994(74)ELT481(SC) in the case Grauer & Weil (India) Ltd. vs. CCE, Baroda. He also refers the judgement of judgement of Tribunal on the issue.

5. Ld. DR on the other hand submits that an identical issue has been upheld by the Hon'ble High Court of Bombay in the case of Indo-Rama Synthetics (India) Ltd. reported in 2007(219)ELT122.

6. I have considered the submissions made by both sides and perused the records.

7. The issue involved in this case is the reversal of proportionate credit inputs which has gone into manufacturing/production of electricity which was consumed in the residential colony/guesthouse/schools/ hospitals etc. by the appellant. It is undisputed that these residential colony/ guesthouse/ schools/hospitals etc. are within the factory premises. I find that the Hon'ble High Court of Bombay in the case of Indo-Rama Synthetics (India) Ltd. (supra) had an occasion to decide an identical issue. After considering the relevant submissions, their lordships held :

> ***18.*** *We have carefully considered the rival submissions. The basic dispute in the present case revolves on the meaning of the word "any other purpose" contained in Rule 57B(iv) of the Central Excise Rules, 1944 as well as similar Rule contained in the Cenvat Credit Rules, 2001 and Cenvat Credit Rules, 2002. During the period from 1997 to 2002 the electricity generated has been utilised by the assessee within the licensed premises for manufacture of final product and at the residential complexes. The question is, whether the assessee is entitled to the credit of duty paid on furnace oil used in the generation of electricity for supply to residential complexes situated within the licensed premises?*
>
> ***19.*** *According to the assessee, the words "any other purpose" in Rule 57B(iv) is wide enough to cover supply of electricity to the residential complexes. In other words, the submission is that once it is established that the electricity manufactured from the duty paid furnace oil is used within the factory premises for any purpose whatsoever, the credit of duty paid on furnace oil would be available.*

__20.__ We find it difficult to accept the submissions of the assessee. In our opinion, credit of duty under Rule 57B(iv) would be available to inputs used for generation of electricity provided, the electricity is used for manufacture of final products or for any other purpose connected with or related to the manufacture of the final products. In other words, the use of electricity must have nexus with the goods manufactured in the factory. For example, where the electricity is used in the production of an intermediate product within the licensed premises for use in the final product or use of electricity in the godowns or workshop established by the assessee within the licensed premises to facilitate storage/repair of the machinery used in the production of the final products, it would be covered within the meaning of the word "any other purpose" in Rule 57B(iv) of the Central Excise Rules, 1944.

__21.__ The fact that the residential complexes are situated within the licensed premises would not entitle the assessee to avail credit of duty paid on furnace oil used in the manufacture of electricity supplied to the residential complexes. It is necessary to establish that the electricity is used for any purpose connected with or related to the production of final products. In our opinion, supply of electricity to the residential complexes situated within the factory premises are neither connected with or related to the production of the final products. In this view of the matter, we hold that the finding recorded by the Tribunal that the assessee is not entitled to the credit of duty paid on the furnace oil used in the generation of electricity supplied to the residential complexes cannot be faulted.

__22.__ The decision of the Apex Court in the case of Grauer and Weil (I) Ltd. v. CCT (supra) and the case of South Eastern Coalfields Limited v. CCE (supra) relied upon by the assessee do not support their case. What is held in those cases is that the words "any premises including the precincts thereof" in Section 2(m) of the Central Excise Act are wide enough to cover any activity carried on within the licensed premises. In both the above cases, the Apex Court was not called upon to consider the issue which is raised in this appeal. In any event, it is pertinent to note that in both the above cases, the activity in question related to the production of excisable goods or an activity connected with or related to the production of the final products. In *the present case, supply of electricity to the residential complexes is wholly unconnected with or related to the final products produced in the factory of the assessee. Therefore, reliance placed on the above decisions of the Apex Court is wholly misplaced.*

8. I also find from the records that this judgement is upheld by the apex court in an appeal filed by the said Indo-Rama Synthetics (India) Ltd. Since the view has been confirmed by the highest court of India, there can be no other view on an identical issue. Since the issue involved in this case regarding the reversal of proportionate Cenvat credit as inputs used for the manufacturing/ production of electricity which is consumed in the residential colony/ guesthouse/ schools/hospitals etc. was in dispute and had to be upheld by the highest court, in my considered view, the penalty imposed by the adjudicating authority as appellant is unwarranted. I set aside the penalty as imposed by the adjudicating authority and upheld by the impugned order.

9. In the light of the foregoing, in the fact and circumstances, the impugned order is held as correct and legal to the extent it confirms the demand of reversal, but is incorrect in upholding the penalty. The appeal is disposed off as indicated hereinabove.

(Dictated and pronounced in open court.)

(M.V.Ravindran)
Member (Judicial)

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