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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/2787 - 2788/2009 – SM [BR] **Date 19/08/2011**

Assistant Registrar
C.E.S.T.A.T, New Delhi
To :
1. **M/S SWARAJ ENGINES LTD.**
2. **M/S SWARAJ ENGINES LTD**

PLOT NO. 2, INDUSTRIAL AREA, FOCAL POINT,
PHASE-IX, S.A.S.NAGAR-160062 DISTT: ROPAR
(PUNJAB)

M/S SWARAJ ENGINES LTD. Appellant

Vs

C.C.E. CHANDIGARH Respondent

I am directed to transmit herewith a certified copy of **Final order No. 481 – 482 / 2011-SM[BR]** dated 14.7.2011 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. CHANDIGARH
C.R. BUILDING, PLOT NO. 19,
SECTOR 17-C, CHANDIGARH
160017

2. Adv. / Consult
MR.V. LAXMIKUMARAN
B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029

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)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.

SINGLE MEMBER BENCH
Court-IV
Excise Appeal No.2787-2788 of 2009-SM

Date of Hearing/Decision: 14.07.2010

(Arsing out of Order-in-Appeal No.242-43-CE/CHD/2009 dated 9.07.2009 passed by the CCE(A), Chandigarh)

For approval and signature:

Hon'ble Mr.Ashok Jindal, 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?	
2	Whether it should 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 Departmental authorities?	

M/s.Swaraj Engines Ltd. Appellant

Vs.

CCE, Chandigarh Respondent

Present for the Appellant: Shri B.L.Narsimhan,Advocate
Present for the Respondent: Ms. R.K.Jagdev, SDR

Coram: Hon'ble Mr.Ashok Jindal, Member (Judicial)

Final **ORDER NO.** 481-482/2011 SM (BR)

PER: ASHOK JINDAL

These two appeals are filed by the appellants against the impugned order demanding duty, interest and equal amount of penalty under Section 11AC of Central Excise Act, 1944.

2. The brief facts of the case are that the appellants are manufacturers of IC Engines. During the course of manufacturing business, they cleared some inputs to job worker following the procedure laid down under Rule 4 (5) (a) of Cenvat Credit Rules without reversing the credit. The said inputs were received back within 180 days after processing. The department was of the view that the appellants have not received back 100% quantity of the inputs which were sent to the job worker. Therefore, the appellants are liable to pay duty on the short received quantity of inputs after processing. Therefore, the show cause notices were issued for demand of duty alongwith interest and for imposing penalty under Section 11AC. Both the lower authorities have confirmed the demands alongwith interest and imposed penalties under section 11AC. Aggrieved by the said orders, the appellants are before this Tribunal.

3. Learned Advocate for the appellants submitted that the appellants have cleared the inputs to the job workers under Rule 4(5) (a) of Cenvat Credit Rules without reversing the credit for further processing. During the course of processing of the inputs, some waste and scrap was generated at the end of the job worker, therefore, the appellants have received less quantity of processed inputs. He further submitted that there is no provision in Cenvat Credit Rules to reverse the credit on waste and scrap generated at the end of the job workers. If at all, any liability arises of duty on waste and scrap, that is to be on job worker as the job worker is a manufacturer. Therefore, the demands are not sustainable. To support his contention, he relied on the decision of this Tribunal in

the case of Rocket Engineering Corporation Ltd. vs. CCE, Pune-II reported in 2006 (193) ELT 33 which has been affirmed by the Hon'ble Bombay High Court reported in 2006 (76) RLT 8 (Bom.). He further submitted that in appeal No.2787/09-SM, the demand has been made by invoking the extended period of limitation which is not sustainable as for earlier period i.e. July, 2001 to March,2002 and January, 2003 to September, 2003 on the same issue has been dropped by the adjudicating authority. Therefore on the same allegation, the extended period of limitation cannot be invoked as held by the Hon'ble Apex Court in the case of Nizam Sugar Factory vs. CCE, AP reported in 2006 (197) ELT 465 (SC).

4. On the other hand, Learned SDR submitted that as per Rule 4(5) (a) of Cenvat Credit Rules the inputs which are sent for processing to the job workers, the same is to be received back by the appellants. Admittedly in this case, the processed inputs received back are of short quantity. Therefore the appellants are required to reverse the credit on the short quantity of inputs received back by them. Therefore, the impugned order is to be upheld.

5. Heard both sides and perused the records.

6. Considering the submissions made by both sides, I find that the issue emerges in this case is whether the appellants or suppliers of inputs sent the inputs to job workers are liable to duty on the scrap generated at the end of job workers which are not received back from the job workers within specified time in terms of Notification No.214/86-CE dated 25.3.86 as amended read with Rule 4(5) (a) of Cenvat Credit Rules or not.

7. The issue has been settled by Hon'ble Bombay High Court in the case of Rocket Engineering Corporation Ltd. cited supra wherein the Hon'ble Bombay High Court has held that there is no liability on the principal manufacturer after 31st March, 2000 to reverse the credit. Therefore the issue is no more res integra. Following the law laid down by Hon'ble Bombay High Court, I hold that the appellants are not required to reverse the credit on short received inputs by them. Therefore, the impugned order is set aside and the appeals are allowed with consequential relief if any.

(ASHOK JINDAL)
MEMBER (JUDICIAL)

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