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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/1196/2005 AND E / 1409 / 2005 –SM[BR]** Date **19/08/2011**

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

To :
**C.C.E.JAIPUR-I**
N.C.R.BUILDING STATUE CIRCLE C-SCHEME
JAIPUR-I
302005

**C.C.E.JAIPUR-I** Appellant
Vs
**M/S SPECIAL ENGINEERING SERVICES LTD.** Respondent

I am directed to transmit herewith a certified copy of **Final order No. 488 – 489/2011-SM[BR]** dated 22.7.2011 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(SM Appeal Branch)

**Copy to :**

1. Respondent
**M/S SPECIAL ENGINEERING SERVICES LTD.**
118,TONK ROAD DURGAPURA
JAIPUR

2. Adv. / Consult
**MR.BIPIN GARG & CO.**
702, VINDHYACHAL KAUSHAMBI, GHAZIABAD-201012

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)

[2] M/S SPECIAL ENGG. SERVICE LTD.
118, TONK ROAD DURGAPURA JAIPUR

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**
**West Block No. 2, R.K. Puram, New Delhi – 110 066.**
**COURT NO. IV**

**Date of Hearing : 22.7.2011**

**Coram:**

Hon'ble Shri Ashok Jindal, Member (Judicial)

| | | |
|---|---|---|
| 1. | Whether Press Reporter 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 Whether their Lordships wish to see the fair copy of the order? | |
| 4. | Whether order is to be circulated to the Department Authorities? | |

## Excise Appeal No. 1409 of 2005-SM

(Arising out of Order-in-Appeal No. 391(MPM)/CE/JPR-I/2004 dated 24.1.2005 passed by the Commissioner (Appeals), Customs & Central Excise, Jaipur)

M/s Special Engineering Services Ltd. Appellant

Vs.

CCE, Jaipur-I Respondent

**Appearance:**

Appeared for Appellant : Ms. Sukriti Das, Advocate
Appeared for Respondent : Shri S.K. Bhaskar, SDR

## Excise Appeal No. 1196 of 2005-SM

[Arising out of Order-in-Appeal No. 391(MPM)/CE/JPR—I/04 dated 18.1.2005 passed by the Commissioner (Appeals), Central Excise, Jaipur]

CCE, Jaipur-I Appellant

Vs.

M/s Special Engineering Services Ltd. Respondent

**Appearance:**

Appeared for Appellant : Shri S.K. Bhaskar, SDR
Appeared for Respondent : Ms. Sukriti Das, Advocate

**Coram:**

**Hon'ble Shri Ashok Jindal, Member (Judicial)**

Final Order No. 488 – 489 / 2011 SM (BR) dated............

**Per Ashok Jindal :**

The assessee as well as Revenue has filed an appeal against the impugned order wherein the Commissioner (Appeals) has confirmed the demand for the period 2001 to 20th June 2003 where Show Cause Notice has been issued on 27.5.2004 holding that there is no suppression of facts and dropped the penalty only. Revenue is in appeal against dropping the mandatory penalty under Section 11AC of Central Excise Act, 1944 on the assessee and assessee is in appeal against the impugned order for confirmation of demand of duty as well as on merits.

2. The brief facts of the case are that the assessees were engaged in the manufacture of bearing races/components. They were engaged in the activity of job work only. In the course of their activity of job work the M.S. turning scrap also arose due to the said job work and it was found that the assessee has wrongly availed Cenvat credit on inputs and capital goods during the period 2000-2001 and 2002-2003 as they had removed bearing races at Nil rate of duty under Notification No. 214/86-

CE dated 1.3.96 as amended. Therefore, they have contravened the provisions of above said notification. Accordingly, Show Cause Notice was issued on 27.5.2004. The Show Cause Notice was adjudicated, demands were confirmed by the adjudicating authority along with interest and mandatory penalty under Section 11AC of the Act. In appeal, the Commissioner (Appeals) holding that there is no suppression but confirmed the demand and dropped the penalty. Aggrieved for the said order, both are in appeal before the Tribunal.

3. Ms. Sukriti Das, ld. Counsel for the asseessee appeared and submitted that as the Commissioner (Appeals) has held that there is no suppression as the asseessee has already informed to the department for availment of Modvat credit and payment of excise duty on scrap generated on bearings components on 21.2.2000. Therefore, the extended period in this case is not invokable as rightly held by the lower appellate authority. But he has confirmed the demand under Section 11A of the Central Excise Act. As per the provisions of Section 11A of the Act, all duties by invoking extended period are sustainable in case of suppression of the facts. As they have already informed to the department, therefore, extended period is not invokable. Hence, demand is not sustainable. To support of this contention in the case **Tamil Nadu Housing Board Vs. CCE Madras** reported in 1994 (74) ELT 9

(SC) on merits she submits that in their own case this Tribunal has already held that the assessee is entitled to take credit utilised Cenvat credit on clearance of waste and scrap generated during manufacturing by job work material through the decision reported in 2009 (235) ELT 859 (Tri.-Del.). Therefore, on merits also they are having a strong case. On the other hand, ld. DR reiterated the grounds of appeal as well as the adjudication order.

4. Heard both sides. On careful consideration of the submissions made by both the sides, the assessee is contesting the case on limitation as well as on merits. On limitation, they have produced on record the letter given to the Range Supdt. dated 22.2.2000 stating the activity undertaken by them and they are not availing the credit and same is being utilized for claiming of waste and scrap. Thereafter, a Show Cause Notice issued in 2004 for the period 2000-2001 till 20th June 2003 invoking extended period is not sustainable as held by the first appellate authority. Moreover, on merits also this Tribunal in assessee's own case has held that the assessee is entitled to utilise Cenvat credit on clearance of waste and scrap generated during the manufacture by job work material. Therefore, following the precedent decision in assessee's own case as well as on merits, I find that the assessee has made out a case and Revenue has no case. Therefore, with these observations appeal

filed by the assessee is allowed with consequential relief, if any and appeal filed by the Revenue is dismissed.

(Dictated & pronounced in open Court)

(Ashok Jindal)
Member (Judicial)

RM