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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/2969/2009 – SM[BR]** Date **19/08/2011**

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

To :
C.C.E. INDORE
MANIK BAGH PALACE, POST BOX NO. 10, INDORE
452001 (M.P.)

C.C.E. INDORE Appellant

Vs

M/S GRASIM INDUSTRIES LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No. 493/2011-SM[BR]** dated 21.7.2011 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 GRASIM INDUSTRIES LTD.
(CHEMICAL DIVISON), NAGDA
(M.P.)

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.
Principal Bench, New Delhi

COURT NO. IV
Excise Appeal No. 2969 of 2009 (SM)

[Arising out of the Order-in-Appeal No. IND-1/179/2009 dated 11/08/2009 passed by The Commissioner (Appeals), Customs & Central Excise, Indore.]

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?	:

CCE, Indore — Appellant

Versus

M/s Grasim Industries Ltd. — Respondent

Appearance

Mrs. R.K. Jagdev, Authorized Representative (SDR) – for the appellant.

None – for the respondent.

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

DATE OF HEARING : 21/07/2011.

Final Order No. 493/2011 SM(BR) Dated : ____________

Per. Rakesh Kumar :-

This is an appeal filed by the Revenue against order-in-appeal No. IND-1/179/2009 dated 11/8/2009. Though a notice for hearing had been sent to the respondent well in time, and the same has been acknowledged, today when this matter was called, none representing the respondent appeared for hearing. On earlier occasions also when this matter had been fixed for hearing on 14/5/11 nobody had appeared. In view of this, so far as the respondent are concerned, the matter under Rule 21 of CESTAT Procedure Rules, 1982 is being decided ex-parte.

2. Heard Mrs. R.K. Jagdev, the learned Senior Departmental Representative, who pleaded that in this matter the Respondent have taken Cenvat credit on the basis of debit notes which is not a prescribed document, that Commissioner (Appeals)'s order permitting the Cenvat credit on the basis of

debit notes is not correct and contrary to the provisions of the Cenvat Credit Rules, 2004, that Commissioner (Appeals) has erroneously relied upon the judgment in the case of **India Gatiway Terminal (P) Ltd. vs. CCE, Cochin** reported in **2008 TIOL – 634 (CESTAT – Bang.)**, which is only a stay order and that she in this regard relies upon the judgment of Hon'ble Punjab & Haryana High Court in the case of **S.K. Foils Ltd. vs. CCE, New Delhi – III** reported in **2009 (239) E.L.T. 395 (P&H)**.

3. I have carefully considered the submissions from the Departmental Representative and perused the records.

4. The only point of dispute in this case is as to whether the Respondent could take Cenvat credit of service tax paid in respect of input services received, on the basis of documents called 'debit notes' issued by service provider. The department's objection is that debit note is not the document prescribed in Rule 9 of the Cenvat Credit Rules, 2004 for availing Cenvat credit. However, there is a clear finding in the impugned order that it is not disputed that document called 'debit note', contain the details like the name and registration

number of the service provider, the nature of the service provided, service tax payable, service tax charged etc. or in other words all the details which are required to be mentioned in the invoice. Since the "debit notes" contain all the details which are required to be mentioned in the invoice and except for its name it can be treated as invoice, in my view, the Commissioner (Appeals)'s order permitting Cenvat credit on the basis of debit note is correct. As regards the judgment of Hon'ble Punjab & Haryana High Court in the case of S.K. Foils Ltd. vs. CCE, New Delhi – III (supra) mentioned in the Revenue's appeal, that judgment is on the issue as to whether Cenvat credit can be taken on the basis of carbon copy of the challan and the ratio of this judgment is not applicable to the facts of this case. In view of this, I do not find any infirmity in the impugned order. The Revenue's appeal is dismissed.

(Dictated and pronounced in open court.)

(Rakesh Kumar)
Member (Technical)

PK