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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/2975/2009 – SM[BR]** Date **25/08/2011**

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 302005.

C.C.E. JAIPUR I Appellant

Vs

M/S SHREE SHYAM FILAMENTS, Respondent

I am directed to transmit herewith a certified copy of **Final order No. 508 /2011-SM[BR]** dated 20.7.2011 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 SHREE SHYAM FILAMENTS,
N.H.NO.8, GAGRU RAVAN,
JAIPUR.

2. Adv. / Consult SHRI B.L.NARSIMHAN ADV.
M/S RESPONDENT:-------------------

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 (Harvana)
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 AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing:20.07.11
Date of decision:20.07.11

Excise Appeal No.E/2975 of 2009-SM (BR)

[Arising out of Order-in-Appeal No.304(DK)CE/JPR-I/2009 dated 23/26/10/2009 passed by the Commissioner of Central Excise (Appeals-I), Jaipur-I].

CCE, Jaipur-I Appellant

Vs.

M/s. Shree Shyam Filaments Respondent

For approval and signature:

Hon'ble Shri Rakesh Kumar, Member (Technical)

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1. Whether Press Reporters may be allowed to see 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?

Appearance: Rep. by Mrs. Renu K. Jagdev, SDR for the appellants.
Rep. by Shri B.L. Narsimhan, Advocate
& Shri Hemant Bajaj, Advocate for the respondent.

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

Final Order No. 508/2011 SM (BR)/Dated:20.07.2011

Per Rakesh Kumar

The respondent had installed new capital goods in the year 1999 and had availed Cenvat credit of excise duty paid in respect of the same. The capital goods were disposed of in Feb., 2006 as used capital goods on payment of duty on the transaction value. The department was of the view that at the time of removal of the capital goods, since the capital goods had not been sold as scrap but as capital goods, this is clearance of the capital goods as such and, therefore, in terms of the provisions of Cenvat Credit Rules, as the same existed during that period, the credit originally taken should have been reversed. It is on this basis that the differential amount of Rs.2,00,960/- was demanded from the respondent along with interest and penalty was sought to be imposed. The Original Adjudicating Authority vide order-in-original dated 5.12.2008 confirmed the Cenvat credit demand of Rs.2,00,960/- along with interest and imposed penalty of equal amount on the respondent under Rule 15 (2) of the Cenvat Credit Rules, 2004. On appeal to the Commissioner (Appeals), the Commissioner (Appeals) vide Order-in-Appeal dated 23.10.2009 set aside the order of the original adjudicating authority on the ground that demand is time barred. Against this order of the

Commissioner (Appeals), the present appeal has been filed by the Revenue.

2. Heard both the sides.

3. Shri R.K. Jagdev, ld. Departmental Representative assailed the impugned order by reiterating the grounds in appeal in the Revenue's appeal and pleaded that at the time of removal of capital goods as such, the Cenvat credit originally taken was required to be reversed that at that time, there was no provisions for reversal of cenvat credit on depreciated value and that the cenvat credit demand is not time barred, as the Appellant had suppressed the relevant information from the Department.

4. Shri B.L. Narsimhan, Advocate, ld. Counsel for the respondent pleaded that the issue on merits stands squarely covered in favour of the respondent by the judgement of Division Bench of this Tribunal in the case of **Greenply Industries Ltd. Vs. CCE, Jaipur reported in 2010 (259) ELT 103 (Tribunal-Delhi)** and also by the judgement of Single Member Bench of the Tribunal in the case of **CCE, Chandigarh Vs. Raghav Alloys (P) Ltd. reported in 2009 (242) ELT 124 (Tribunal-Delhi)**, that the judgement of the Tribunal in the case of **Raghav Alloys (P) Ltd.** (supra) has been upheld by the Madras High Court in the case of **CCE Vs. Rogini Mills Ltd. reported in 2011-TIOL-05-HC-MAD-CX,** that when the issue involved in this case on merits stands decided in favour of the respondent, there is no merit in the Revenue's appeal.

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

6. The only point of dispute in this case is as to whether during the period of dispute in respect of the clearance of the used capital goods , the cenvat credit originally taken was required to be reversed or an amount equal to the duty on the transaction value of the goods was required to be paid. I find that this issue stands decided in favour of the respondent by the judgement of the **Division Bench** of the Tribunal in the case of **Greenply Industries Ltd.** (supra) and also by **Single Member Bench** of the Tribunal in the case of **CCE, Chandigarh Vs. Raghav Alloys (P) Ltd.** (supra) as well as by the decision of the **Madras High Court in the case of CCE Vs. Rogini Mills Ltd.** (supra). In view of this, I hold that there is no infirmity in the impugned order. The revenue's appeal is, therefore, dismissed.

(Rakesh Kumar)
Member (Technical)

Ckp.