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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/3994/2010 – SM[BR] E / STAY / 3871/2010-SM[BR] **Date 20/10/2011**

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

To :
M/S AAR KAY INDUSTRIES,
G.T. ROAD, MANDI GOBINDGARH. 147301

M/S AAR KAY INDUSTRIES, Appellant
Vs
C.C.E. CHANDIGARH Respondent

I am directed to transmit herewith a certified copy of **Final order No. 721/2011-SM[BR]&S/642/2011** dated 23.9.2011 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.RAKESH K. SHAHI
22 FIRST FLOOR, BD COMPLEX, MANDI GOBINDGARH-147301

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 & SERVICE TAX APPELLATE TRIBUNAL

Excise Stay Application No.3871 of 2010-SM & Appeal No.3994 of 2010-SM

M/s. Aar Kay Industries — Appellant

Versus

CCE, Chandigarh — Respondent

[Arising out of Order-in-Appeal No.121/CE/CHD-I/2010 dated 16.09.2010 passed by the Commissioner (Appeals), Customs and Central Excise, Chandigarh].

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 none for the appellant.
Rep. by Shri R. Jagdev, SDR for the respondent.

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

Final Order No. 721/2011 SM (BR) & Dated : 23.9.2011
S-642/2011 SM (BR)

Per Rakesh Kumar:

The appellants are manufacturers of TMT Bars, Joists, Chennels, etc. chargeable to central excise duty. They availed Cenvat credit of the central excise duty paid on inputs and capital goods used in or in relation to the manufacture of finished products. One of the items in respect of which they have taken cenvat credit amounting to Rs.54,335/- is H.R. Coils, which according to them, had used in the factory for making the pipes, which had been used for supply of gas to the furnace. The jurisdictional Asstt. Commissioner disallowed the cenvat credit on the ground that H.R. Coils were not covered by the definition of the capital goods and since there is no evidence that the appellants have used the H.R. Coils, in question, for manufacture of pipes, the H.R. Coils can not be treated as inputs used in the manufacture of capital goods. It is on this basis that the Asstt. Commissioner confirmed the cenvat credit demand of Rs.54,335/- along with interest. However, no penalty was imposed on the appellants. On appeal to the Commissioner (Appeals), the Asstt. Commissioner's order was upheld. Against this order, this appeal along with stay application has been filed.

2. Today when this matter was called, none representing the appellant appeared. However, there is a letter dated 6.9.2011 from the appellant, wherein they have made written submissions and have requested for decision of the stay application and appeal on merits. Though today this matter is listed for hearing of stay application only, since a short issue is

involved and the appellant have requested for disposal of the stay as well as appeal, the matter is being taken up for final disposal after waiving the requirement of pre-deposit.

3. The appellant in their letter dated 6.9.2011 have stated that H.R. Coils, in question, have been used for fabrication of pipes, which were used for supplying gas to the furnace, that the Tribunal in the case of **CCE, Chennai Vs. Thirumalai Chemicals (2008 (227) ELT 592)** has held that H.R. Coils used for fabrication of various parts of plants are capital goods eligible for credit and that in view of this, the impugned order upholding the denial of cenvat credit in respect of H.R. Coils is not correct.

4. Heard ld. SDR, who pleaded that H.R. Coils are not covered under the definition of capital goods, and that though the appellant plead that the H.R.Coils had been used for fabrication of pipes, there is no evidence in this regard, and on this point, there is a specific finding of the original adjudicating authority stating that the appellant have not putforth any evidence with regard to their claim, that they have themselves manufactured pipes out of H.R. Coils or got the pipes manufactured through the some job workers. She also cited the judgement of the Tribunal in the case of **Commissioner of Central Excise, Allahabad Vs. D.M.S. Sugar reported in 2002 (147) ELT 215 (Tribunal-Delhi)**, wherein it was held that H.R. Coils are not capital goods and are not eligible for cenvat credit under the erstwhile Rule 57Q of the Central

Excise Rules, 1944. She, therefore, pleaded that there is no infirmity in the impugned order.

5. I have carefully considered the submissions of the ld. SDR and also the submissions of the appellant in their letter dated 6.9.2011. The only point of dispute in this case is as to whether the H.R. Coils, in respect of which cenvat credit amounting to Rs.54,335/- has been taken, had been used for fabrication of pipes, which are capital goods. The appellant claim that H.R. Coils had been used by them for fabrication of pipes for supplying of the gas to the furnace. But as observed by the original adjudicating authority, no evidence in this regard has been produced. Just on the basis of the claim that H.R. Coils has been used for fabrication of the pipes, which are capital gods, the same cannot be accepted as inputs eligible for cenvat credit when the Appellant's claim regarding use of H.R. Coils is not backed by any evidence. In view of this, I do find any merit in this appeal and the same is dismissed. The stay application also stands disposed of.

(Rakesh Kumar)
Member (Technical)

Ckp.

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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

Dated: **17/05/12**

MISC Order No. : 123 / 2012 –SM[BR]
ROM Application No. : E/ROM/36/2011
Appeal No. : E/3994/2010-EX[SM]

1. Appellant
M/S AAR KAY INDUSTRIES,
G.T. ROAD, MANDI GOBINDGARH.

2. Respondent
C.C.E. CHANDIGARH
C.R. Building, Plot No. 19, Sector 17-C, Chandigarh 160017

3. **Advocate(s) / Consultant(s) :**
Rakesh K. Shahi
22 First Floor, BD Complex, Mandi
Gobindgarh-147301

4. C.D.R

5. Bar Association, CESTAT, New Delhi

6. Director Publications, Customs, Excise. I.P. Estate, New Delhi

7. M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp. ICICI Bank of Defence Colony, New Delhi-110003

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9. Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

10. Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad-15

11. LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

12. TaxIndiaOnline.com Pvt. Ltd., Unit No. 1, 2nd Floor, Vasant Arcade, Nelson Mandela Road, Vasant Kunj, New Delhi - 110070

13. Office Copy

14. Gaurd File

Assistant Registrar
Single Member 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 ROM Application No. 36 of 2011 in Appeal No. 3994 of 2010 (SM)

M/s Aar Kay Industries — Appellant

Versus

CCE, Chandigarh — Respondent

Appearance

None – for the appellant.

Shri R.K. Verma, Authorized Representative (DR) - for the Respondent.

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

DATE OF HEARING : 11/05/2012.

Misc Order No. 123/2012-SM (BR) Dated : ____________

Per. Rakesh Kumar :-

This is an application filed under Section 35C(2) of Central Excise Act, 1944 in respect of final order No. 721/2011- SM (BR) dated 23rd September 2011 for rectification of certain mistakes apparent from the record in the Tribunal's final order.

2. None appeared for the applicant. Heard the learned DR who pleaded that the ROM is not maintainable as from the perusal of

the ROM application it is seen that no factual mistake has been pointed out and the appellant in the guise of ROM is seeking review of decision of the Tribunal.

3. I have carefully considered the submissions of learned DR and have also gone through the ROM and other record of this case. On going through the ROM, it is seen that as such the ROM does not point out any mistake apparent from records. The points raised in the ROM do not satisfy the criteria in this regard as prescribed by the Apex Court in the judgment of *CCE, Calcutta vs. ASCU* reported in *2003 (151) E.L.T. 481 (S.C.)*. Perusal of the ROM shows that the same is a sort of application for review of the final order. In view of this, the same is dismissed.

(Pronounced in the open court.)

(Rakesh Kumar)
Member (Technical)

PK