

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/2498/2009 – SM[BR]

Date 27/10/2011

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

To :
M/S SUPREME POLYMERS PVT. LTD.
138, INDUSTRIAL AREA, JHOTWARA, JAIPUR.
M/S SUPREME POLYMERS PVT. LTD.

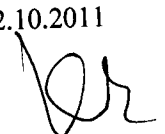
Appellant

Vs
Respondent

dated 12.10.2011

C.C.E. JAIPUR I

I am directed to transmit herewith a certified copy of Final order No. 733 / 2011-SM[BR]
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. JAIPUR I
N.C.R.BUILDING, STATUE
CIRCLE, "C" SCHEME, JAIPUR
302005.

2. Adv. / Consult
MR.ALOK KOTHARI

A-92, MANISH MARG, NEMI NAGAR, GANDHI PATH, VAISHALI NAGAR,
JAIPUR

3. C.D.R

4. Bar association, CESTAT, New Delhi

5. Director Publications, Customs, Excise. I.P. Estate, New

6. M/s Centax Publications 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 -

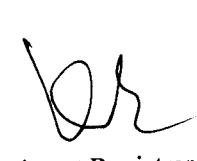
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A, Iscon Mall, Above Star India Bazar, Satellite Road,
Ahmedabad-15

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**
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. III
Excise Appeal No. 2498 of 2009 (SM)

M/s Supreme Polymers P. Ltd.

Appellant

Versus

CCE, Jaipur – I

Respondent

[Arising out of the Order-in-Appeal No. 136 (DK)-CE/JPR-I/
2009 dated 02/07/2009 passed by The Commissioner
(Appeals), Customs & Central Excise, Jaipur – I.]

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?

Appearance

None – for the appellant.

Shri B.L. Soni, Authorized Representative (DR) – for the
respondent.

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

DATE OF HEARING : 12/10/2011.

final Order No. 733 / 2011 *SM (BY)* Dated : _____

Per. Rakesh Kumar :-

The issue involved in this case is as to when the Cenvat credit availed capital goods are removed as capital goods after use, whether the Cenvat credit originally availed is required to be reversed as per the provisions of Rule 3 (5) of Cenvat Credit Rules, 2004 or payment of an amount equal to excise duty on the transaction value of the used capital goods is sufficient. Department being of the view that in such a situation in accordance with the provisions of Rule 3 (5) of Cenvat Credit Rules, 2004 the Cenvat credit originally taken at the time of receipt of capital goods was to be reversed, issued a show cause notice for recovery of an amount of Rs. 1,94,892/- alongwith interest and also for imposition of penalty under Rule 15 of Cenvat Credit Rules. The show cause notice was adjudicated by the Assistant Commissioner by which the Cenvat credit demand, as made in the show

cause notice was confirmed alongwith interest and penalty of equal amount was imposed. On appeal to Commissioner (Appeals) against the Assistant Commissioner's order, the Commissioner (Appeals) vide order-in-appeal dated 2/4/09 dismissed the appeal. Against this order, the present appeal has been filed.

2. Though a notice for hearing had been sent to the appellant well in time and the same has been acknowledged, today when this matter was called none from the appellant appeared. In view of this, in accordance with Rule 21 of the CESTAT Procedure Rules, 1982, this appeal is being decided ex-parte.

3. Heard Shri B.L. Soni, learned Senior Departmental Representative who defended the impugned order by citing the judgment of Larger Bench of the Tribunal in the case of **Modernova Plastyles Pvt. Ltd. vs. CCE, Raigad** reported in **2008 (232) E.L.T. 29 (Tri. – LB)** and also the judgment of the Tribunal in the case of **CCE, Kolkata – IV vs. Shalimar Wire Industries Ltd.** reported in **2007 (216) E.L.T. 373 (Tri. – Kolkata)**. He also pleaded that since Rule 3 (5) of the

Cenvat Credit Rules, as the same existed during the period of dispute, provided that in the case of clearance of Cenvat credit availed inputs ^{or} capital goods as such, an amount equal to the Cenvat credit availed is required to be paid and the Rule does not make any distinction between the clearance of the capital goods without any use or clearance of capital goods after some use, in this case, at the time of removal of the capital goods, even though after use for certain period, the Cenvat credit originally availed should have been reversed. He, therefore, pleaded that there is no infirmity in the impugned order.

3. I have carefully considered the submissions from learned SDR and perused the records.

4. I find that the issue involved in this case is no longer res-integra, as same has been decided in favour of the appellant by the Tribunal as well as by High Courts. The Tribunal in the case of **CCE, Chandigarh vs. Raghav Alloys (P) Ltd.** reported in 2009 (242) E.L.T. 124 (Tribunal – Delhi) and also in the case of **Greenply Industries Ltd. vs. CCE, Jaipur** reported in 2010 (259) E.L.T. 103 (Tribunal –

Delhi) has held that at the time of removal of Cenvat credit availed capital goods after use, duty on transaction value would be required to be paid and not the amount of Cenvat credit originally availed. The same view has been taken by Hon'ble Madras High Court in the case of **CCE vs. Rogini Mills Ltd.** reported in **2011 – TIOL – 05 – HC – MAD – CX**, and also by Hon'ble Punjab & Haryana High Court in the case of **CCE, Chandigarh vs. Raghav Alloys (P) Ltd.** reported in **2011 (268) E.L.T. 161 (P&H)**. In the later case, Hon'ble Punjab & Haryana High Court has observed that the machines cleared after being put to use for nine years cannot be treated as machines cleared as such and the insertion of proviso w.e.f. 13/11/07 ^{to Rule 3(5)} makes it clear that there is difference between the machines cleared without putting into use and machines cleared after use. In view of the settled legal position, on this issue, I hold that the impugned order is not sustainable. The same is set aside. The appeal is allowed.

(Dictated and pronounced in open court.)

(Rakesh Kumar)
Member (Technical)

PK