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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/463 /2003 – SM[BR] **Date 28/11/2011**

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

To :
C.C.E. MEERUT I

EXCISE CHOWK, UNIVERSITY ROAD, MANGAL
PANDEY NAGAR, MEERUT - 250005.

C.C.E. MEERUT I Appellant

Vs

U.P.STATE SUGAR CORPORATION LTD Respondent

I am directed to transmit herewith a certified copy of **Final order No. 801 / 2011-SM[BR]** dated 8.11.2011 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
U.P.STATE SUGAR CORPORATION LTD
DOIWALA, DEHRDADUN.

2. Adv. / Consult
MR.BIPIN GARG
B-1/1289,A-VASANT KUNJ, NEW DELHI

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. III
Excise Appeal No. 463 of 2003 (SM)

[Arising out of the Order-in-Appeal No. 09/CE/MRT-I/2002 dated 26/12/2002 passed by The Commissioner (Appeals), Central Excise, Meerut – 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?	:

CCE, Meerut — Appellant

Versus

M/s U.P. State Sugar Corporation Ltd. — Respondent

Appearance

Shri R.K. Gupta, Authorized Representative (DR) – for the appellant.

Shri Alok Arora, Advocate – for the respondent.

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

DATE OF HEARING : 08/11/2011.

Final Order No. 801/2011 SM (Br) Dated : _____________

Per. Rakesh Kumar :-

The respondent manufacturer of sugar, had sent rotor assembly to M/s Jyoti Ltd. for repairs. M/s Jyoti Ltd. did the repair in course of which some parts were replaced by new parts and for the repair job, they billed the respondent for an amount of Rs. 2,69,000/- + Rs. 8,000/- for a part which had been replaced. However, on the aggregate amount of Rs. 2,79,000/- charged by M/s Jyoti Ltd., Central Excise duty @ 13% i.e. Rs. 36,010/- was charged. The repaired rotor assembly was sent back to the respondent under the invoice mentioning the charges for the repair including the charges for replacement part and the total excise duty paid. The respondent took Cenvat credit of the duty paid on the repaired rotor assembly. The department denied the same they denied this Cenvat credit on the ground that the invoice on the basis of which the Cenvat credit had been taken is of repaired capital goods and not new capital goods and that the repaired capital goods are not covered by the definition of 'capital goods' as given in Rule 57Q of Central Excise Rules. The Jurisdictional Assistant Commissioner confirmed the Cenvat credit demand alongwith interest and imposed penalty of Rs. 1,000/- on the respondent. However, on appeal to Commissioner (Appeals), the Commissioner (Appeals) set aside the Assistant Commissioner's order. The Revenue filed an appeal before the Tribunal against the Commissioner (Appeals)'s order and the Tribunal vide final order No. 1550/2003 dated 4/12/03 dismissed the appeal on the ground that what the respondent had done is availing the credit of duty which was paid by M/s Jyoti Ltd. on the basis of the invoices issued by them, which was a valid document for the taking Modvat credit, and that when the department had insisted on payment of duty by M/s Jyoti Ltd., it was not open to the department to deny the Modvat credit on the basis of repair invoices. Against this order of the Tribunal, the Department filed a reference appeal before Hon'ble Uttrakhand High Court and the High Court vide order dated

10/12/2010 remanded the matter to the Tribunal with the following directions :-

> **"it would be appropriate to remit back the matter to the Tribunal, in as much as, the Tribunal has not considered whether repair and testing, as was ordered and subsequently as was billed, could be one of the goods specified schedule to the Tariff. The Tribunal is directed to deal with the matter as quickly as possible."**

1.2 Accordingly, this appeal has been listed for denovo consideration.

2. Heard both the sides.

2.1 Shri R.K. Gupta, the learned Departmental Representative, pleaded that the repairing is not manufacture, that no duty was required to be paid, that in view of this, the respondent could not take Cenvat credit on the basis of the repair invoice issued by M/s Jyoti Ltd. and that, therefore, the impugned order is not correct. He also emphasized that repaired goods are not covered by the definition of capital goods under Rule 57Q.

2.2 Shri Alok Arora, Advocate, the learned Counsel for the respondent, pleaded that the rotor assembly was a part of capital goods falling under heading 8503 of the Tariff, that the rotor assembly had been sent to M/s Jyoti Ltd. for repairs and was sent back after repairs under the invoice of M/s Jyoti Ltd., that the invoice of M/s Jyoti Ltd. mentions the classification of the goods as 8503 which is covered by the definition of capital goods as given in Erstwhile Rule 57Q of the Central Excise Rules, that during repairs certain components had been replaced, that when the department considering the activity of M/s Jyoti Ltd. as repair had charged duty, which is mentioned in the invoice issued by M/s Jyoti Ltd., the department cannot deny Cenvat credit on the basis of that invoice, that the Cenvat credit cannot be denied on the basis of an invoice by seeking to revise the assessment at the receiver end, that in this regard, he relies upon the judgment of the Hon'ble Supreme Court in the case of **Commissioner of Central Excise & Customs vs. MDS Switchgear Ltd.** reported in **2008 (229) E.L.T. 485 (S.C.)** and also the judgment of Tribunal in the case of **Owens Bilt Ltd. vs. CCE, Pune** reported in **1998 (101) E.L.T. 642**

(Tribunal), that in view of this, the Cenvat credit has been correctly taken and that there is no infirmity in the impugned order.

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

4. The Cenvat credit, in question, had been taken by the respondent on the basis of an invoice issued by M/s Jyoti Ltd. for repair of the rotor assembly. It is well settled that repair activity does not amount of manufacture and, as such, no duty should have been charged from M/s Jyoti Ltd. on the repair of rotor assembly. But still when the department has collected duty from M/s Jyoti Ltd. on the repair of rotor assembly and the payment of duty is evidenced by the invoice issued by M/s Jyoti Ltd., its Cenvat credit cannot be denied to the respondent. The only way to deny the Cenvat credit in this case would be to revise the assessment at the end of M/s Jyoti Ltd., refund the duty paid by them and only in that case the Cenvat credit could have been denied to the respondent, but this has not been done. Without revising the assessment at the end of manufacture of some inputs, the Cenvat credit cannot

be denied at the end of the receiver of those inputs. This is the view which has been taken by the Apex Court in the case of **CCE & C vs. MDS Switchgear Ltd.** (supra) and also by the Tribunal in the case of **Owens Bilt Ltd. vs. CCE, Pune** (supra). Therefore, notwithstanding the fact that the repair activity of M/s Jyoti Ltd. does not amount of manufacture, since the payment of duty by M/s Jyoti Ltd. on this repair has not been reviewed by the department, the Cenvat credit cannot be denied to the respondent. In view of this, I do not find any infirmity in the impugned order. Revenue's appeal is dismissed.

(Dictated and pronounced in open court.)

(Rakesh Kumar)
Member (Technical)

PK