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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/1311/2011 – SM[BR] &E / STAY / 1683/2011-SM[BR] **Date 28/11/2011**

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

To :
M/S GULJAG INDUSTRIES LTD.
VILLAGE-KHICHIYAN PALRI, JODHPUR (RAJ)

M/S GULJAG INDUSTRIES LTD., Appellant
Vs
C.C.E. JAIPUR II Respondent

I am directed to transmit herewith a certified copy of **Final order No.809 /2011-SM[BR]&S/804/2011** dated 3.11.2011 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
C.C.E. JAIPUR II
N.C.R.BUILDING, STATUE
CIRCLE, "C" SCHEME, JAIPUR
302005.

2. Adv. / Consult
MR.OM P.AGARWAL & CO.
56, SECTION 7, N.P.H ROAD, JODHPUR(RAJ)

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 AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. III

Excise Appeal No. 1311 of 2011 SM
Excise Stay Application No. 1683 of 2011 SM

[Arising out of Order-in-Appeal No. 62/CB/CE/JPR-II./2011 dated 17.3.2011 passed by the Commissioner of Customs & Central Excise (Appeals II), Jaipur]

For approval and signature:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)

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1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? : No

2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : No

3. Whether Their Lordships wish to see the fair copy of the Order? : Seen

4. Whether Order is to be circulated to the Departmental authorities? : Yes

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M/s. Guljag Industries Ltd. Appellants

Vs.

Commissioner of Central Excise Jaipur II Respondent

Appearance:

Shri O.P. Agarwal, Chartered Accountant for the Appellants
Shri S.K. Bhaskar, DR for the Respondent

Date of Hearing/decision : 3.11.2011

Final ORAL ORDER NO. 809/2011 SM(BR) & S-804/2011 SM(BR)

Per Archna Wadhwa (for the Bench):

After dispensing with the condition of pre-deposit of duty of Rs.13099/- and penalty of identical amount, I proceed to decide the appeal itself inasmuch as the issue stands covered by the precedent decisions of the Tribunal.

2. The appellant is availing modvat credit in respect of inputs used in the manufacture of electricity which is being captively consumed by them for manufacture of their final product chemical. A part of the electricity stands cleared by them to neighbouring units by reversing the proportionate modvat credit availed on the inputs used for generation of the said electricity. Revenue's contention is that instead of reversing the credit, they are expected to pay 10% of the value of electricity and inasmuch as the same is exempted.

3. I find that the issue is no more res integra and stands settled by umpteen judgements of judicial and quasi judicial authorities. One such reference can be made to judgement of Karnataka High Court in the case of CCE, Bangalore III vs. Himalaya Drug Company as reported in [2011 (271) ELT 350 (Kar)] and judgement of Gujarat High Court in the case of

CCE vs. Maan Pharmaceuticals Ltd. as reported in [2011 (263) ELT 661 (Guj)] .

4. There is no need to ~~imply~~ multiply the case laws as the issue is very much well settled in favour of the appellant. Commissioner (Appeals) is bound ~~from~~ to follow such law to extend the benefit to the appellants instead of rejecting their appeal involving such a small amount and to compel them to undertake the further litigation cost. The lower authorities are bound to follow the ratio of the decision of the higher authorities and the course of action adopted by them in not following such precedent decisions cannot be appreciated.

5. In view of the above, I set aside the impugned order and allow the appeal with consequential relief to the appellants. Stay petition as also appeal gets disposed of in the above manner.

(Pronounced in the open Court)

(Archana Wadhwa)
Member(Judicial)

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