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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/1354/2009 – SM[BR] **Date 29/11/2011**

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

To :
M/S ESTER INDUSTRIES LTD.

CHARUBETA, SOHAN NAGAR P.O. PILIBHIT ROAD, KHATIMA -262308.

M/S ESTER INDUSTRIES LTD. Appellant

Vs

C.C.E. MEERUT II Respondent

I am directed to transmit herewith a certified copy of **Final order No. 836 /2011-SM[BR]** dated 11.11.2011 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. MEERUT II
OPP. SAHEED PARK (NEAR ASHOK KI LAT) DELHI ROAD,
MEERUT (UP)

2. Adv. / Consult
MR.R. SANTHANAM
C-3/210, JANAK PURI, NEW DELHI - 110 058.

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)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
Court No.IV

E/Appeal No.1354/2009-SM

(Arising out of order in appeal No. 140/ST/MRT.II/09 dated 25.3.2009 passed by the Commissioner of Customs & Central Excise(Appeals), Meerut)

Date of Hearing: 11.11.2011

For Approval and signature:

Hon'ble Mr.Mathew John, Technical Member

1.	Whether Press Reporters may be allowed to see The order for publication as per Rule 27 of the CESTAT(Procedure) Rules, 1982?	Yes
2.	Whether it would 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 Department Authorities?	No

M/s Easter Industries — Appellants

Vs

CCE, Meerut-II — Respondent

Appeared for the Appellant: Shri R. Santhanam, Advocate
Appeared for the Respondent: Shri S.K. Bhaskar, DR

Coram: **Hon'ble Shri Mathew John, Member (Technical)**

Final ORDER – 836/2011 SM (Br)

Per Mathew John:

The appellants are manufacturers of excisable goods. They were taking Cenvat credit of excise duty paid on inputs. The Cenvat Credit Scheme was amended by new Cenvat Credit Rules, 2004, effective from 10-09-2004 by which they were allowed to take Cenvat credit of service tax paid on input services. Rule 9 (1) (f) of Cenvat Credit Rules read as under:

> *"**RULE 9. Documents and accounts.** — (1) The CENVAT credit shall be taken by the manufacturer or the provider of output service or input service distributor, as the case may be, on the basis of any of the following documents, namely :-*
>
> *(a)-------, or*
>
> ---
>
> ---
>
> *(f) an invoice, a bill or challan issued by a provider of input service on or after the 10th day of, September, 2004;"*

2. They had taken insurance of their plant and machinery and paid service tax on such insurance against bills dated prior to 10-09-2004. They took credit of service tax paid on the basis of such invoices dated earlier to 10-09-2004 to the extent of the period covered by the said insurance policies for the period after 10-09-2004. The Revenue was of the view that they could not have taken credit on the basis of such invoices in view of provisions in Rule 9 (1) (f) of the Cenvat Credit Rules 2004. A Show Cause Notice issued in this regard was adjudicated confirming the duty demand of Rs. 2,37,705 along with interest and also penalty equal to the said amount under Rule 15 of the Cenvat Credit Rules,2004 read with section 11AC of the Act. Aggrieved by the order the appellants filed an appeal with the Commissioner (Appeal) who rejected their appeal. Aggrieved by the order of the Commissioner (Appeal), Appellants have filed this appeal before the Tribunal.

3. The Counsel for the Appellant submits that insurance for plant and machinery cannot be taken on month to month basis and is normally taken on yearly basis. They have not taken credit of service tax for insurance for the period prior to 10-09-2004 and have taken credit only for that tax on that part of the premium

which covered insurance from 10-09-2004. So there is no reason to deny such credit which is legitimately due to them.

4. His next contention is that the Show Cause Notice is issued on the basis of audit conducted by the department and there are decisions of the Tribunal that for short levies detected in audit, Show Cause Notice invoking the larger period of five years cannot be invoked. So he contests that the demand is time barred.

5. The Ld. Authorized Representative for Revenue submits that Rule 9 (1) (f) is clear enough that credit can be taken only if the invoice for the service is raised on or after 10-09-2004 which is not the case in respect of the impugned credit. He further submits that this is a clear case where the appellants knew about the legal provisions but took credit by adopting distorted interpretation of the rules. When the documents are not submitted to the department there is no way the department can know about the false interpretation adopted. Wrong credit came to light during audit only. This is clearly a case of suppression of information and hence extended period can be invoked for raising the demand.

6. I have considered arguments on both sides. This is case where credit is taken contrary to provisions in Rule 9 (1) (f) of Cenvat Credit Rules, 2004. There is no case to deviate from the express provisions in the rule. So on merits of the issue I do not see any reason to agree with the contention of the appellant. I am also not able to agree with the contention of the appellant that extended period cannot be invoked if suppression is detected during audit conducted by department. As far as suppression is concerned the matter has to be decided with reference to facts of each case. The issue to be considered is whether the relevant information was placed before the department earlier and if so in what form, whether in a manner from which the issue at hand was clearly discernible to the department. The provision in the rule relevant to the credit taken is very clear and simple and easy to understand. The very fact that the assesse has taken

proportionate credit by adopting their own interpretation without intimation to department would justify to consider this as a case of mis-representation and suppression to invoke extended period for demanding the excess credit availed and utilized. So I do not agree with the contention of the appellants on time bar either.

7. In the matter of penalty I find that Rule 15 of Cenvat Credit Rules does not mandate imposition of penalty equal to wrong credit taken. Further even under section 11AC the assesse is to be given an option to pay 25% of the duty evaded as penalty within 30 days of receipt of the order for final closure of the matter. No such option has been given in this case. So I find it proper to give an option to the appellant to pay, within 30 days of receipt of this order, the duty demanded, interest thereon and 25% of the duty amount as penalty for final closure of the case. If such payment is not paid the penalty shall get restored to the amount equal to wrong credit taken.

8. Thus the appeal is rejected except to the extent of reduction in penalty as per terms above.

(Pronounced in the open Court)

(Mathew John)
Member(Technical)

MPS*