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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. 980 /2011 , ST / 574 / 2011-SM[BR] **Date 27/12/2011**

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

To :
M/S UMA POLYMERS LIMITED,
NH-65, PALI ROAD, MOGRA, JODHPUR

M/S UMA POLYMERS LIMITED, Appellant

Vs

C.C.E. JAIPUR II Respondent

I am directed to transmit herewith a certified copy of **Final order No. 935 – 936 / 2011-SM[BR]** dated 25.11.2011 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 SHRI K.K. ANAND ADV.
A-103, DEFENCE COLONY NEW DELHI-24.

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

2. **M/S UMA POLYMERS LIMITED,**
N.H. 65, PALI ROAD, VILLAGE-MOGRA, JODHPUR (RAJ.)

Assistant Registrar
(SM Appeal Branch)

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

E/Appeal No.980/2011

(Arising out of order in appeal No.505/CB/ST/JPR.II/10 dated 3.1.2011 passed by the Commissioner of Central Excise (Appeals), Jaipur)

Date of Hearing: 25.11.2011

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 Uma Polymers Ltd — Appellants

Vs

CCE, Jaipur-II — Respondent

ST/Appeal No. 574/2011

CCE, Jaipur-II — Appellant

Vs

M/s Uma Polymers Ltd — Respondent

Appeared for the Appellant: Shri Saurabh Yadav, Advocate
Appeared for the Respondent: Smt. Renu Yagdev, SDR

Coram: **Hon'ble Mr. Mathew John, Member (Technical)** final ORDER - 935- 936/2011 SM (BR)

Per Mathew John:

In this case, M/s Uma Polymers Ltd had utilized the service of transportation for outward transportation of goods from their factory. This service was received during the month of April and May, 2007.

2 But the appellants did not pay service tax on such service which they were required to pay. Later on, when issue was pointed out to them in November, 08 , they paid such service tax by debit in their entry dated 28.11.2008 in the Cenvat account.

3. The Revenue's contention is that the service in question was not an output service for the appellants, in view of the amendment made in the Cenvat Credit Rules, 2004 by Notification No. 10/2008 (NT) dated 1.3.08. Therefore, they should not have paid service tax on this service by utilizing cenvat credit. A show cause notice was issued in this regard. On adjudication, demand of Rs. 15,156/- is confirmed and penalties of Rs. 10,000/- each were imposed under Sections 76 and 78 of the Finance Act, 1994.

4. The contention of the appellants is that during the time when service was received, it was possible to pay service tax for this type of service through cenvat credit and the amendment to the rule prescribing that this tax has to be paid through cash has come into force from April, 2008 only. They argued that the provisions applicable at the time of receipt of the service would apply and not the provision in force at the time of payment of service tax. He relies on

the decision of the Tribunal in the case of Reliance Industries Ltd Vs CCE reported in 2008 (10) STR 243 laying down that the rate of duty applicable will be the rate in force when service was provided and not the rate on the date when service tax was paid.

5. The AR for the Revenue submits that the decision in the case of Reliance Industries (supra) was in the matter of rate of duty and not the manner of payment.

6. The Appeal No. ST/574/2011 filed by the Revenue is in the same matter and is relating to the quantum of penalty determined in the impugned order. The Revenue pleads that the Commissioner (Appeals) decided the appeal filed by assesse before him without simultaneously considering the appeal filed by Revenue against the same adjudication order. Revenue's prayer is that the matter should be remitted to the Commissioner (Appeals) for deciding both appeals together.

7. Considered arguments of both sides. This is an issue on which there is no clear provision under the Rules. But considering the overall scheme of the Cenvat Credit Rules, I am of the view that the provisions that are applicable on the date of payment would apply. Therefore, I do not give any relief in the matter of duty demanded. However, on payment of such amount in PLA along with the interest, they are allowed to take credit of the cenvat credit utilized for the purpose on 28.11.08. The appellate authority has come to the conclusion that there was no malafide intention on the part of appellants but he has not given full wavier of penalty. This is not justified. Once section 80 of Finance Act, 1994 is invoked, full waiver

This is the

from penalty is to be given and not just partial relief. ~~There is~~ legal point raised in the appeal by Revenue. But the legal point is to be resolved by giving full relief from penalty rather than increasing penalty. There is no case for sending the order for de-novo consideration. So the appeal is partially allowed by setting aside the penalty imposed on the appellants.

8. Thus both the appeals are disposed of accordingly.

(Order dictated and pronounced in the open Court.)

(MATHEW JOHN)
Technical Member

MPS*