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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/1061/2008 – SM[BR] Date 16/03/2010

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

To :
C.C.E. CHANDIGARH

C.R. BUILDING, PLOT NO. 19, SECTOR 17-C,
CHANDIGARH 160017

C.C.E. CHANDIGARH Appellant

Vs

M/S SABOO TOR PVT. LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No**.316 / 2010 –SM[BR] dated 10.3.2010 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent

M/S SABOO TOR PVT. LTD.

TRILOKPIR ROAD,KALA AMB, DISTT. SIRMOUR (H.P)

2. Adv. / Consult

NONE;---------------------

3 S.D.R
4 ~~J.C.D.R.~~
5 Bar association. CESTAT. New Delhi
6 Director Publications. Customs. Excise. I.P. Estate. New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 Raghuraman's 44-B. Regal Flat.Shipra Suncity. Indirapuram - 201010.Ghaziabad. DT. U.P.
10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11 M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
12 Taxindiaonline.com Pvt.Ltd. B-XI/8183.Vasant Kunj. New Delhi - 110070
13 Taxmann Allied Service Pvt Ltd.. 21/35. West Punjabi Bagh. New Delhi - 110026
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15
15 LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
16 Office Copy
17 Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Appeal No.E/1061 of 2008-SM (BR)

[Arising out of Order-in-Appeal No.203/CE/CHD/2008 dated 31.03.2008 passed by the Commissioner of Central Excise (Appeals), Chandigarh]

Date of Hearing/ Decision:10.03.2010

For approval and signature:

Mr. M. Veeraiyan, Member (Technical)

1. Whether Press Reporters may be allowed to see CESTAT (Procedure) Rules, 1982. Yes
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : Yes
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

CCE, Chandigarh ...Appellants
(Rep. by Shri V.K. Saxena, Jt.CDR)

Vs.

M/s. Saboo Tor Pvt. Ltd. ...Respondent
(Rep. by None.)

CORAM: **Hon'ble Mr. M. Veeraiyan, Member (Technical)**

Final Order No. 316/2010 SM (BR)/Dated:10.03.2010

Per M. Veeraiyan:

This is an appeal by the Department against the order of the Commissioner (Appeals) No. 203/CE/CHD/2008 dated 31.03.2008.

2. None appears for the respondent. Heard the ld. Jt. CDR.

3. It is submitted by the ld. Jt. CDR that the very same issue has been considered by the Tribunal in an appeal by M/s. Saboo Alloys (P) Ltd. in

Excise Appeal No.50 of 2008-SM (BR), the present respondent and it was held that the claim for refund of Cenvat credit in cash consequent to their opting out of the benefit of Notification No.15/2003 is not admissible to them.

4. It is noticed that the issue involved in both the appeals are the same. In the Final Order No.190/2010-SM (BR) dated 28.01.2010 in Excise Appeal No.50 of 2008-SM (BR), the appeal of the party was rejected with the following findings:-

> 6. *I have carefully considered the submissions from both sides. Learned Advocate for the appellants relied on several decisions which relate to situations where the assessee was forced to pay in cash while they could have utilised the Cenvat credit and decisions when cash refund was allowed when the factory has ceased to function and registration has been surrendered. He also relied on the decision of the Hon'ble Supreme Court by which SLP filed against the decision of the Karnataka High Court in the case of Slovak India Trading Com. Pvt. Ltd. has been dismissed. The Hon'ble High Court of Karnataka in the said case upheld the decision of the Tribunal that when there was no manufacture in the light of closure of the company, Rule 5 was not available for the purpose of rejection. In the present case, the appellant is very much in business and in fact, are availing the benefit under notification No. 50/2003 which provides also for option to opt*

out of exemption in any financial year. At any rate, when they opted for the benefit of Notification No. 50/03 with effect from 11.4.05, the appellants were having balance of Rs.1,59,728/- as the Cenvat credit in their account and the sum which was adjusted by them stands restored to by the order of the Tribunal dated 10.1.08. Therefore, the decision of the Tribunal dated 10.1.08 stands implemented. The provision for refund of amount lying in credit account is specifically covered for situations mentioned in Rule 5 of the Cenvat Credit Rules. It is not a case where the appellant is covered by Rule 5 of the Cenvat Credit Rules as credit was not lying unutilised due to export. It is not case of the appellant that credit lying in their account cannot be utilised in future date as the law stands now. In view of the above, no valid reasons are adduced to interfere with the order of the Commissioner (Appeals).

5. In view of the above, the appeal of the Department deserves to be allowed. Accordingly, the appeal of the Department is allowed by setting aside the order of the Commissioner (Appeals) and restoring the order of the Original Authority.

Order dictated & pronounced in open court on 10.03.2010.

(M. Veeraiyan)
Member (Technical)

Ckp.