

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/677 /2008 – SM[BR]

Date 29/03/2010

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
Respondent

M/S SAMTEL ELECTRON DEVICES

I am directed to transmit herewith a certified copy of Final order No. 362 / 2010 –SM[BR] dated 11.3.2010
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 SAMTEL ELECTRON DEVICES

(A DIVISION OF M/S SAMTEL COLOR LTD.)

PLOT NO. 6, SECTOR-2,

PARWANOO,

DISTT. SOLAN (H.P.)

2. Adv. / Consult SHRI AJAY JAIN ADV.

1293, SECTOR 18-C , CHANDIGARH

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 Publications 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 Kuni, New Delhi - 110070

13 Taxmann Allied Service Pvt Ltd., 21/35, West Puniabi 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 (Harvana)

16 Office Copy

17 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. 677 of 2008-SM(BR)

[Arising out of Order-in-Appeal No. 63/CE/CHD/2008 dated 21.1.2008
passed by Commissioner (Appeals), Central Excise, Chandigarh]

For approval and signature:

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

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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? | : | 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 |
-

C.C.E., Chandigarh.

...

Appellants

Vs.

M/s. Samtel Electron Devices

....

Respondent

Appearance:

Shri S.K. Bhaskar, DR for the Appellants

Shri Ajay Jain, Advocate for the Respondent

Date of Hearing/decision : 11.3.2010

ORAL ORDER NO. 362/2010 SM (BR)

Per M. Veeraiyan:

This is an appeal by the Department against the order of the Commissioner (Appeals) No. 63/CE/CHD/2008 dated 21.1.08.

2. Heard both sides.

3. The relevant facts, in brief, are that the respondent received capital goods in their factory at Parwanoo, Dist. Solan unit during the period February, 1996 to July, 1996 and December, 1996 and took modvat credit under Rules 57Q. The respondent could not install the same and hence the same were removed from the factory in February, 1999. The respondent also had a unit at Ghaziabad. The respondents informed the jurisdictional Central Excise authority and removed the capital goods to the unit in Ghaziabad and while clearing the goods, they paid 'duty' amounting to credit actually taken by them at the time of receipt of the goods. It is also claimed that after receiving the goods in Ghaziabad unit, they have taken the credit of 'duty', paid by the Parwanoo factory. Show cause notice was issued alleging that under Rule 57S(1)(ii) the respondent was required to pay at a higher rate applicable at the time of clearance of the goods treating the said capital goods as if manufactured by their unit at Parwanoo. Original authority accordingly, confirmed the demand of differential duty amounting to Rs.1,65,544/- along with interest and imposed equal amount as penalty. Commissioner (Appeals), on appeal by the party following the decision of the Tribunal in the case of CCE, Goa vs. Polyset Plastics Ltd. reported in

2007 (210) ELT 577 (Tri-Mum.) allowed the appeal of the party. Hence, the department is in appeal.

4. Learned DR submits that during the relevant time the respondents have brought the capital goods and having not installed the same and having not utilised the same for intended purpose and having removed the same are required to pay the duty on the said goods as if manufactured and cleared by their Parwanoo unit. In view of the above, he submits that order of the Commissioner (Appeals) should be set aside and order of the original authority should be restored.

5.1 Learned Advocate for the respondent submits that due to unavoidable circumstances, the capital goods could not be installed and utilised by Parwanoo unit. However, the same have been removed to the factory of the same manufacturer (same legal entity) and same has been used for the intended purpose inasmuch as the goods have been removed from one of their units of the same manufacturer to their other unit i.e. of the same manufacturer. In the given circumstances, there is no jurisdiction to treat the capital goods as if manufactured in their Parwanoo unit and he seeks to uphold the order of the Commissioner (Appeals).

5.2 Alternatively, he also submits that since the removal from their Parwanoo unit to the Ghaziabad unit was duly intimated to the jurisdictional Excise Authorities, the show cause notice for demand of duty dated 31.10.2002 is clearly time barred. He also submits that if an higher amount of duty was paid at the time of clearance from their Parwanoo factory, the same was immediately available to their Ghaziabad unit as credit and

therefore it is a clear case of revenue neutrality and on this ground also there is no scope for invoking the extended period of limitation and holding that the removal was intended to evade the duty. He also relied on the decision of the Tribunal in the case of Hindustan Zinc Ltd. vs. CCE, Jaipur II, reported in 2008 (232) ELT 687 (Tri-Del.) and the decision of the Tribunal in the case of P.T.C. Industries Ltd. vs. Commissioner of Central Excise, Jaipur I reported in 2003 (159) ELT 1046 (Tri- Del).

6. I have carefully considered the submissions from both sides. Undisputedly, the respondent is a legal entity, having more than one unit at different locations. The capital goods procured by one unit stands used by the second unit though after a gap of few years. It is also not in dispute that the respondents have removed the capital goods after intimation to the Department as recorded by the original authority. Therefore, there is no intention on the part of the respondents to avail the benefit irregularly. Further, it is also not disputed that if the higher amount was paid at the time of removal from their Parwanoo factory, the respondent was entitled to the said higher amount as credit and therefore, it is clear case of revenue neutrality. In addition to above, it is noticed that Rule 57 clearly permits the capital goods in respect of credit of specific duty been allowed under Rule 57Q may be used in the factory of the manufacturer of final product. In the present case, it is apparent that the capital goods stands used by the manufacturer though in a different factory than the one in which the said goods were initially received.

7. In view of the above, the order of the Commissioner (Appeals) setting aside the demand and consequently the penalty does not call for any interference.

8. The appeal is, therefore, rejected.

(M. Veeraiyan)
Member(Technical)

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