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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

Date 08/04/2010

Appeal No. E/2979/2007 – SM[BR]

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

To :
C.C.E. JAIPUR I
N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME,
JAIPUR 302005.

Appellant

C.C.E. JAIPUR I

Vs

Respondent

M/S ICEBERG FOODS LTD

I am directed to transmit herewith a certified copy of **Final order No**.396 / 2010 –SM[BR] dated 18.3.2010 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 ICEBERG FOODS LTD
   F-34, ROAD NO 4, VK INDUSTRIAL AREA, JAIPUR(RAJ)
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)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No. 2, R.K. Puram, NEW DELHI

COURT NO. III

CENTRAL EXCISE APPEAL NO. 2979 OF 2007-SM

[Arising out of Order-in-Appeal No. 256(GRM)/CE/JPR-I/2007 dated 24th August, .2007 passed by the Commissioner (Appeals-I), Central Excise, Jaipur]

Dated of hearing/decision; 18th March, 2010

For approval and signature:

Hon'ble Mr. Rakesh Kumar, Member (Technical)

1.	Whether Press Reporters may be allowed to see the order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3.	Whether their Lordships wish to see the fair copy of the order?	
4.	Whether order is to be circulated to the Departmental authorities?	

CCE, Jaipur-I — Appellant

Vs.

M/s. Iceberg Foods Ltd., — Respondents

Appearance:

Shri I. Baig, Authorised Representative (SDR) for the Revenue;
None for the respondents

Coram:

Hon'ble Mr. Rakesh Kumar, Member (Technical)

ORAL ORDER NO. 396/2010 SM(BR) **dated**

Per RAKESH KUMAR:

The Respondents are manufacturer of Packaged Drinking Water and Soda Water chargeable to Central Excise duty under Chapter Sub-heading 20011010 & 2201020 of the Schedule to the Central Excise Tariff Act, 1985. They were also availing Cenvat credit of duty paid on inputs as per the provisions of Cenvat Credit Rules. During the period 2004-05 and 2005-06, they brought a stock of finished goods i.e. packaged drinking water and soda water manufactured in their other unit on stock transfer basis to their unit at Jaipur, as there was huge demand for these products and the production of Jaipur unit was not sufficient. However, while bringing the finished goods to their factory for sale, they also took Cenvat credit of duty paid on these goods. There is no dispute that these goods have been brought for sale, not for processing or reprocessing. The Department was, therefore, of the view that the Respondent are not eligible for Cenvat credit amounting to Rs. 2,17,456/- of duty on packaged drinking water and soda water brought to their factory for sale. Besides this, it was found that out of the above amount, Cenvat credit amounting to Rs. 18,674/- had been taken on extra copy of invoice, not a duplicate copy. Accordingly, the department issued a show cause notice for recovery of Cenvat credit along with interest and imposition of penalty which was adjudicated by the Asst. Commissioner vide Order-in-Original dated 29.12.2006 by which the Cenvat credit demand of Rs. 2,17,456/- was confirmed along with interest and penalty of equal amount imposed under Rule 15 of Cenvat Credit Rules, 2004 read with Section 11AC of Central Excise Rules, 1944. However, on appeal filed by the Respondents, the Commissioner (Appeals) vide Order-in-Appeal No. 256(GRM)ST/JPR-I/2007 DATED 29.8.2007 set aside the order of the Asst. Commissioner with regard to Cenvat credit demand of Rs. 1,98,782/- and confirmed the demand of only Rs. 18,674/- on the ground that the credit of this amount had been taken on the strength of invoice which was extra copy and not the duplicate copy. He also reduced the penalty to Rs. 18,674/-. It is against this order of the Commissioner (Appeals) that the present appeal has been filed by the Revenue.

2. Though a notice had been sent to the Respondent on 25.12.2010 intimating them about the hearing of this matter and the same has been acknowledged, but no one appeared on behalf of the respondents. Accordingly, in accordance with Rule 21 of CEGAT (Procedure) Rules, 1982, the matter is being decided ex-parte.

3. Shri I. Baig, learned D.R. pleaded that the impugned order is not correct as per the provisions of Cenvat Credit Rules, Cenvat credit is allowed only in respect of inputs received by a manufacturer for use in or in relation to the manufacture of finished product; that in terms of Rule

16 of the Central Excise Rules, 2002, Cenvat credit can be taken of the duty paid on finished goods when the same ~~was~~ are returned to the factory for being reconditioned, reprocess etc., that in this case Cenvat credit has been taken on packaged drinking water and soda water which was brought to the Respondents' factory from their other unit on stock transfer basis for sale, not for processing or reprocessing, and that in view of this, the impugned order is not correct.

4. I have carefully considered the submissions of the learned D.R. and perused the record. On going through the order of the Commissioner (Appeals) I find that the respondents themselves in their submissions made before the Commissioner (Appeals) have stated that the packaged drinking water and soda water had been brought to their factory on stock transfer basis for the purpose of sale, as the Jaipur factory was not working properly and at that time there was huge market demand. There is no contention that the goods brought into the factory, in respect of which Cenvat credit has been availed, has been used in or in relation to the manufacture of final product or has been subjected to any processing or reprocessing as mentioned in Rule 16 of the Cenvat Credit Rules, 2002.

5. Rule 3(1) of Cenvat Credit Rules, 2004 permits Cenvat credit in respect of any input received in the factory of manufacturer of final product which are used in or in relation to the manufacture of final products. Thus, inputs which are not meant for use in or in relation to the

manufacture of final product would not qualify for Cenvat credit. The other situation where Cenvat credit in respect of finished goods is allowed is Rule 16 of Central Excise Rules, 2002 which permits the Cenvat credit of duty paid on the goods which are returned to the factory reprocessing, reconditioning, etc. In the present case, neither Rule 3(1) of Cenvat Credit Rules, 2004, nor Rule 16 of Central Excise Rules, 2002 is attracted. Hence, the impugned order permitting Cenvat Credit in respect of goods not used in or in relation to the manufacture of final product is not sustainable. The same is set aside. Order-in-Original passed by the Asst. Commissioner is restpred. Accordingly, Revenue's appeal is allowed.

(RAKESH KUMAR)
MEMBHER (TECHNICAL)

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