

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/1230/2008-1231/2008 – SM[BR] & E/ CO / 379-380 / 2008 –SM[BR]

Date 19/04/2010

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

To :
C.C.E BHOPAL

HOSHANGABAD ROAD, 48, ADMINISTRATIVE
AREA, AREA HILLS, BHOPAL (M.P.) 462011

C.C.E BHOPAL

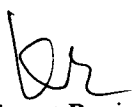
M/S S.S.CROP CARE LTD

Appellant

Vs

Respondent

I am directed to transmit herewith a certified copy of Final order No. 450 – 451 / 2010 –SM[BR] dated 8.4.2010
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 S.S.CROP CARE LTD

UNIT II, WILSON LANE, LUN WATER TANK, INDUSTRIAL AREA, GOVINDPURA, BHOPAL(MP)

2. Adv. / Consult SHRI A.H. ANSARI ADV.

C-134, KOH-E- FIZA, BDA COLONY
BHOPAL-462001.

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 Company Law Institute of India Pvt Ltd., No.2(Old No. 36), Vaithyaram Street, T. Nagar, Chennai -17

9 ~~Raghuraman's 44-B, Regal Flat, Shriya Suncity, Indirapuram - 201010, Ghaziabad, DT, U.P.~~

10 M/s. Deeparchie Publications. M-93, Marg. 46, Saket, New Delhi 110017

11 ~~Taxindiaonline.com Pvt.Ltd. B-XI/8183, Vasant Kuni, New Delhi - 110070~~

12 Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005

13 Easy Service Tax Online Dot Com Pvt.Ltd.407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad-15

14 LAWCRUX Advisors Pvt Ltd, LAW House, 1-8, Sector - 10, Faridabad 121003 (Harvana)

15 Office Copy

16 Guard file


Assistant Registrar
(SM Appeal Branch)

2. M/S S.S.CROP CARE LTD

UNIT I, SHED NO 10, INDUSTRIAL AREA, GOVINDPURA,
BHOPAL(MP)

**IN THE CUSTOMS, EXCISE AND SERVICE TAX
APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. III**

**Excise Appeal No. 1230 to 1231 of 2008-SM(BR)
Excise CO No. 379 to 380 of 2008-SM(BR)**

[Arising out of Order-in-Appeal No. 36 & 37/BPL/2008 dated 15.4.2008
passed by the Commissioner of Central Excise (Appeals), Bhopal]

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? | : | <i>Yes</i> |
| 2. Whether it should be released under Rule 27 :
of the CESTAT (Procedure) Rules, 1982 for
publication in any authoritative report or not? | : | <i>Yes</i> |
| 3. Whether Their Lordships wish to see the fair :
copy of the Order? | : | <i>Seen</i> |
| 4. Whether Order is to be circulated to the :
Departmental authorities? | : | <i>Yes</i> |
-

C.C.E., Bhopal

...

Appellants

Vs.

M/s. S.S. Crop Care Ltd.

....

Respondents

Appearance:

Shri V.K. Saxsena, Jt.CDR for the Appellants
Shri A.H. Ansari, Advocate for the Respondent

Date of Hearing/decision : 8.4.2010

450-451/2010 SM@S

ORAL ORDER NO. ~~450-451~~ - 450-451/2010 SM@S

Per M. Veeraiyan:

Appeals No. E/1230/08 and E/1231/08 are by the department against the order of the Commissioner (Appeals) No. 36-37/BPL/2008 dated 15.4.2008. The Cross objections No. 379/08 and 380/2008 by the assessee are connected to these appeals. These appeals and Cross Objections are disposed of by this common order.

2. Heard both sides.

3. The respondents have two units in close proximity to each other. The respondents have undertaken job work for M/s. Bayer Crop Science (India) Ltd. The Unit ^I of the respondents cleared part of the inputs on which credit has been taken to their other units and to other job workers as directed by M/s. Bayer Crop Science (India) Ltd. While transferring the material to other units, respondents has adopted the value of 110% of landed cost and paid the higher duty and the recipient units have taken the duty paid by the first unit as ~~credit~~ credit. The Department issued show cause notice alleging that the Unit I ought to have paid the duty only to the extent of credit taken by Unit No.1 and their having paid excess duty, they enabled the other units to take excess credit and the differential amount (the actual duty paid minus the duty payable being equal to the credit taken) should be treated as amount collected as excise duty and same was recoverable in terms of section 11D of the Central Excise Act, 1944. The original authority confirmed the demand from Unit I amounting to Rs.4,79,391/- as excess duty paid by

● Unit I in terms of section 11D read with section 11A. The original authority also confirmed the demand from Unit II amounting to Rs.2,11,638/- on the ground that they have availed the excess credit consequent to excess payment of duty by unit No. 1 (It is clarified that the difference between two amounts is due to the fact that some materials have been supplied to other job workers by unit No. 1). The original authority imposed penalty of Rs.10,000/- on unit No. 1 and no penalty was imposed on unit No.2. Commissioner (Appeals) has set aside the orders of the original authority. Hence the department is in appeal.

4. Learned Jt. CDR reiterates the findings and reasoning of the original authority and the grounds of appeal.

5. Learned Advocate for the respondents submits that adoption of higher value while transferring the inputs to their another unit or to the job workers was by way of abundant caution as there was earlier objections about the quantum of duty paid on such inputs cleared by them. The excess ^{paid} duty by them stands credited to the accounts of Central Government. There is no recovery by the respondents in excess of what was deposited to the Central Government and therefore provisions of section 11D are not applicable. He also submits that in respect of inputs cleared during the period from 13.6.05 to 17.2.06, the demand having been proposed by show cause notice dated 15.6.07, the same is time barred.

6. I have carefully considered the submissions from both sides. The unit No.1 which has cleared the inputs as such, undisputedly is required to reverse the credit equal to the amount of credit originally taken by them at

● the time of removal of goods as such during the relevant period. Definitely there is excess payment of duty (or excess reversal of credit) on the inputs cleared as such to another unit and to other job workers. However, the inputs cleared/removed by unit No. 1 were not cleared to any buyers. Unit No. 1 has not sold any material to unit No. 2. Further, Unit No.1 of the respondents have merely transferred the material to other job workers as directed by M/s. Bayer Crop Science (India) Ltd. and such job workers who received the inputs from unit No. 1 cannot be treated as buyers. Section 11D applies to a ^{situation} where "every person who is liable to pay duty under this Act or the rules made thereunder, and has collected any amount in excess of the duty assessed or determined and paid on any excisable goods under this Act or the rules made thereunder from the buyer of such goods in any manner as representing duty of excise, shall forthwith pay the amount so collected to the credit of the Central Government." (Emphasis supplied)

7. In such a situation, as mentioned in Section 11D, the person shall forthwith pay the amount so collected to the credit of Central Government. In the present case, the respondents is not a seller of the inputs as they have removed the same to other job workers and their other unit. Such recipients from unit No. 1 of the respondents cannot be treated as buyers. At any rate, the respondents have not collected any amount in excess of what they have paid to the Central Government. Under these circumstances, the question of applying section 11D to the present case does not arise.

8. There is no suppression of any relevant facts with intention to evade payment of duty. Whatever duty was paid by the respondents was available

● as credit to the other unit. The allegation that the respondents enabled other units to avail excess credit intentionally is thus not corroborated. Therefore, as rightly held by the Commissioner (Appeals), the demand relating to the period 13.6.05 to 17.2.06 having been raised by the show cause notice dated 15.6.07 is clearly time barred.

9. In view of the above, no valid grounds have been adduced to interfere with the orders of the Commissioner (Appeals). The appeals by the Department are, therefore, rejected. The Cross Objections which are merely in support of the orders of the Commissioner (Appeals) are also disposed of.

(M. Veeraiyan)
Member(Technical)

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