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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/128 /2009 – SM[BR]   Date 08/12/2010

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

To :
M/S RANA CASTINGS LTD.
JASODHARPUR INDUSTRIAL AREA, KOTDWAR.

M/S RANA CASTINGS LTD. Appellant

Vs

C.C.E. MEERUT I Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1375 / 2010 –SM[BR] dated 2.12.2010 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. MEERUT I
   EXCISE CHOWK, UNIVERSITY ROAD, MANGAL PANDEY NAGAR, MEERUT - 250005.
2. Adv. / Consult
   MR.AALOK ARORA, ADVOCATE
   82-MISSION COMPOUND, SAHARANPUR-247001 (U.P.)
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. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
10. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
11. Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15
12. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
13. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(SM Appeal Branch)

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

Appeal No.E/128/2009-SM

Arising out of: OIA No.186-CE/MRT-I/2008, dt.22.10.2008

Passed by: Commissioner of Central Excise & Customs (Appeals), Meerut

For approval and signature:
Hon'ble Mrs. Archana Wadhwa, Member (Judicial)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it should 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 Departmental authorities?	Yes

Appellant:
M/s Rana Castings Ltd.

Respondent:
CCE Meerut I

Represented by:
Shri Alok Arora, Advocate for the Assessee;
Shri S.K. Bhaskar, DR for the Revenue.

CORAM:
MRS. ARCHANA WADHWA, MEMBER (JUDICIAL)

Date of Hearing: 10.11.10
Date of Decision: 2-12-10

Final ORDER No. 1375/2010 SM (BR)

Per: Mrs. Archana Wadhwa:

The disputed issue in the present appeal is as to whether the old and used crucibles on which the appellants have availed MODVAT Credit as capital goods cleared by the appellant, would require reversal of CENVAT Credit originally taken by the appellant.

2. The appellants have relied upon various decisions of the Tribunal in support of their submissions that when the capital goods are removed "as such", the credit taken is required to be reversed. But, where the same are removed after a prolonged use as waste & scrap, no reversal on credit is required to be made of duty paid on transaction value would meet the requirement of the law. My attention has been drawn to the following decisions.

a) Madura Coats Pvt. Ltd Vs. CCE Tirunelveli
2005 (190) ELT 450 (Tri-Bang.)

b) Cummins India Ltd. Vs. CCE Pune III
2007 (219) ELT 911 (Tri-Mumbai)
Confirmed by Hon'ble Mumbai High Court
2009 (234) ELT A 120 (Bom.)

c) Trinity Auto Components Ltd. Vs. CCE Pune
2010 (257) ELT 548 (Tri-Mumbai)

3. I find that there is some dispute on the factual position such as the Commissioner (Appeals) has not accepted the appellant's contention that the goods were sold as scrap. The appellants have referred to the facts that old and used crucibles were sold @ Rs.5/- per kg, which shows that the same were considered as scrap. However, the lower authorities observed that the crucibles were sold "as such" to unit engaged in manufacture of iron and steel products using crucibles for production. As such, having held that use of crucibles as scrap in buying unit

beyond comprehension, he has confirmed the order of the Assistant Commissioner.

4. I find that the leg al issue stand settled in the light of the decisions of the Tribunal as also in the light of Tribunal's decision in the case of M/s Grasim Industries Vs. CCE Jaipur 2007 (82) RLT 515 (Tri-Delhi). Inasmuch as the dispute relates to the factual position, I would like the original adjudicating authority to verify the said facts once again, for which purpose, I set aside the impugned order and remand the matter to original adjudicating authority.

5. Another issue in the appeal is as regards confirmation of interest of Rs.36,274/- on account of excess credit of Rs.1,23,450/- availed by the appellant on the strength of Bill of Entry, which was reversed by them on being pointed out by the department. It is not clear as to whether the said credit was used by the appellant during the relevant period or the same remains only as a paper entry in their credit account. As per the declaration of the law by Hon'ble Punjab & Haryana High Court in the M/s Maruti Udyog Ltd. 2007 (214) ELT 173 (P&H) if the credit availed does not stand utilised, no interest in respect of the same can be confirmed. For verification of the above factual position, I remand the mater to original adjudicating authority.

6. Inasmuch as the appeal stand remanded, the original adjudicating authority would also look into the issue of imposition of penalty.

(Pronounced in Court on 2-12-10.)

(Archana Wadhwa)
Member (Judicial)

cbb

Order Pronounced.