TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

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/652 - 655 /2010 – SM[BR] &E/STAY/ 667-670 /2010-SM[BR] Date 09/12/2010
E/ 2599 / 2010-SM[BR] &E / STAY / 2366 / 2010-SM[BR]

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

To :
M/S. BSL LTD.
P. O. BOX NO.17, MANDPAM, BHILWARA.

M/S. BSL LTD. Appellant

Vs

C.C.E. JAIPUR II Respondent

am directed to transmit herewith a certified copy of **Final order** No.1387-1391/2010-SM[BR]&S/667-671/2010dated 22.11.2010 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. JAIPUR II [2] C.C. E. GHAZIABAD.
   N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.
2. Adv. / Consult SHRI SAURABH YADAVE ADV. [2] SHRI RAJESH CHHIBBER ADV.
   A-103, DEFENCE COLONY, NEW DELHI-24. FA-9, NEW KAVI NAGAR, GHAZIBAD.

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)

2. M/S. BSL LTD.
   P. O. BOX NO. 17, MANDIPAM, BHILWARA.

3. M/S. BSL LTD.
   P. O. BOX NO.17, MANDPAM, BHILWARA.

4. M/S BSL LTD.
   P.O. BOX NO. 17, MANDPAM, BHILWARA.

5. M/S FAB CONSULTANTS & ENGG.
   P.LTD., D-30, SECTOR -17, KAVI NAGAR, IND. AREA,
   GHAZIBAD[U.P.]

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

Excise Appeal No. 652- 655 of 2010-SM(BR) &
Excise Stay Application No. 667-670 of 2010-SM(BR)

[Arising out of Order-in-Appeal No. 473-476(KKG) CE/JPR-II/2009 dated 22.12.2009 passed by the Commissioner of Central Excise (Appeals), Jaipur II]

M/s. BSL Ltd. Appellants

Vs.

Commissioner of Central Excise Respondent
Jaipur II

Excise Appeal No. 2599 of 2010-SM(BR) &
Excise Stay Application No. 2366 of 2010-SM(BR)

[Arising out of Order-in-Appeal No. 72-74/ CE/GZB/2010 dated 20.5.2010 passed by the Commissioner of Central Excise (Appeals), Ghaziabad]

M/s. FAB Consultants & Engineers P. Ltd. Appellants

Vs.

Commissioner of Central Excise Respondent
Ghaziabad

For approval and signature:

Hon'ble Mr. M. Veeraiyan, 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? : 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? : NO

Appearance:

Shri Rajesh Chibber and Shri Saurabh Yadav Advocates, for the Appellants
Shri Anil Khanna, SDR for the Respondent

Date of Hearing/decision : 22.11.2010

Final

ORAL ORDER NO. 1387-1391/2010 SM(BR)
S-667-671/2010 SM(BR)

Per M. Veeraiyan:

1.1 Appeal Nos. E/652 to 655/2010 are by M/s. BSL Ltd. against common order in appeal No. 473-476(KKG) CE/JPR-II/2009 dated 22.12.2009.

1.2 Appeal No. E/2599/2010 is by M/s. FAB Consultants & Engineers P. Ltd. against the order of the Commissioner (Appeals) No. 72-74/ CE/GZB/2010 dated 20.5.2010.

2. Heard Shri Saurabh Yadav, advocate for M/s. BSL Ltd. and Shri Rajesh Chibber, Advocate for M/s. Fab Consultants & Engineers Pvt. Ltd. Heard Shri Anil Khanna, learned SDR for the department.

3. As short matter is involved, and as appeals deserve to be disposed of finally, pre-deposit of dues as per the impugned orders are waived and stay

petitions are disposed of and appeals are taken up for final hearing with the consent of both sides.

4.1 In the case of M/s. BSL Ltd. four show cause notices dated 29.3.07, 4.10.10, 27.12.07 and 16.7.08 were issued for the period from 1.4.02 to 31.3.08 proposing demand of amounts at 8% /10% of value of the exempted goods on the ground that appellants have not maintained separate accounts in respect of common inputs which went into manufacture of exempted products. The demands have been made in terms of Rule 6(3) of Cenvat Credit Rules, 2002 and Cenvat Credit Rules of 2004.

4.2 In Appeal by M/s. FAB Consultants & Engineers P. Ltd., the demand of an amount at 10% of value of exempted goods relating to period December, 2007 to June, 2008 under Rule 6(3)(b) of Cenvat Credit Rules, 2004 on the ground that the appellants have not maintained separate accounts in respect of common inputs which have gone into the manufacture of exempted products.

5.1 Learned Advocate for the appellants M/s. BSL Ltd. submits that Rule 6 of Cenvat Credit Rules, 2002 and Rule 6 of CENVAT Credit Rules, 2004 were retrospectively amended by Sections 72 and 73 respectively by Finance Act, 2010 providing for regularisation of such disputes subject to payment of amount equivalent to Cenvat Credit attributable to inputs used in or in relation to the manufacture of exempted goods. In view of the above, he seeks the matter may be sent to the jurisdictional Commissioner of Central Excise to enable them to avail the benefit of such retrospective amendments.

5.2. Learned Advocate for M/s. Fab Consultants Engg. Pvt. Ltd. submits that for part of the period involved in dispute, the matter should be considered afresh by the Commissioner in the light of amendments by Sections .72 and 73 by Finance Act, 2010. He also submits that for period from 1.4.2008, law already stands amended enabling adjustment subject to reversal of proportional credit involved in inputs used in the exempted goods and therefore, he seeks that the matter may be remitted to the Commissioner.

6. Learned SDR, in the light of the amendment in terms of section 72 and 73 of Finance Act, 2010 amending Rule 6 of Cenvat Credit Rules, 2002 and Rule 6 of Cenvat Credit Rules, 2004 respectively, has no objection to the proposals made on behalf of the appellants.

7. In view of the above, I deem it appropriate that the matter be considered afresh by the Commissioner in the light of the amendments carried out to Cenvat Credit Rules, 2002 and Cenvat Credit Rules, 2004 by the Finance Act, 2010. To enable the same, I set aside the orders of the authorities below and sent the matter to the Commissioner for fresh consideration after granting reasonable opportunity of hearing to the appellants. Appellants are directed to make necessary application to the Commissioner within 45 days from the date of receipt of this order.

8. The appeals are disposed of as above. Stay petitions are ~~disposed also~~ also disposed of.

(M. Veeraiyan)
Member(Technical)

ss

FAX : 011-26108426 **REGISTERED / AD**

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK NO.2, R.K.PURAM, NEW DELHI-110066
SINGLE MEMBER APPEAL BRANCH

Dated: **03/12/2012**

To

Appellant as per address in table below

Respondent as per address in table below

MISC Order No. MO/290/2012-SM[BR] dated 16/11/2012

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of **the Central Excise and Salt Act, 1944.**

Asstt. Registrar(SINGLE MEMBER Appeal Branch)

	Application	Appeal	Name and Address of Appellant
1	**E/ROM/13/2012**	**E/652/2010**	**BSL LTD.** P. O. Box No.17, Mandpam, Bhilwara.
			Name and Address of Respondent
2			**C.C.E. JAIPUR II** N.C.R.Building, Statue Circle, "C" Scheme, Jaipur 302005.

--

Other Appellants and Respondents as per Annexure

Copy To

3 Advocate(s) / Consultant(s):

Sanjay Khatri
4-kA-32, Jawahar Nagar,
Jaipur,
Rajasthan

--

4 Bar Association, CESTAT, Delhi

5 Director Publications, Customs, Excise. I.P. Estate, Delhi

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

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

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

9 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

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

11 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

12 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

13 C.D.R. **14** Office Copy **15** Guard File

Asstt. Registrar(SINGLE MEMBER Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing : 16.11.2012

Excise Rectification of Mistake No. 13 of 2012-SM in Excise Appeal No. 652 of 2010-SM

(Arising out of Final Order No. 1387-1391/2010-SM(BR) & S-667-671-SM(BR) dated 22.11.2010 passed by the CESTAT, New Delhi)

M/s BSL Ltd. Appellant/Applicant

Vs.

CCE, Jaipur-II Respondent

Appearance

Appeared for Appellant : Ms. Sukriti Das, Advocate

Appeared for Respondent : Shri S.K. Panda, Jt. CDR. &
Shri B. Bhushan, A.R.

CORAM: HON'BLE SHRI MATHEW JOHN, MEMBER (TECHNICAL)

Misc Order No. 290/2012 SM (BR) dated............

Per Mathew John:

Revenue has filed this application for rectification of mistake in Tribunal's Final Order No. 1387-1391/2010-SM(BR) and S/667-671/2010 dated 22.11.2010. The above order related to availment of Cenvat credit in respect of inputs used in the manufacture of exempted product and dutiable products. Para- 7 of the order took note of the amendment made in Cenvat Credit Rules 2002 and Cenvat Credit Rules, 2004 by Finance Act 2010 retrospectively and ordered as under:-

> "7 In view of the above, I deem it appropriate that the matter be considered afresh by the Commissioner in the light of amendments carried out to Cenvat Credit Rules, 2002 and Cenvat Credit Rules, 2004 by the Finance Act, 2010. To enable the same, I set aside the orders of the authorities below and sent the matter to the Commissioner for fresh consideration after granting reasonable opportunity of hearing to the appellants. Appellants are directed to make necessary application to the Commissioner within 45 days from the date of receipt of this order."

2. Revenue is aggrieved by the direction that if application was filed within 45 days of date of receipt of the order the same should be considered. Revenue points out as per Section 71(2) of Finance Act, 2010 such application should have been made within six months from the date of enactment of Finance Act 2010 and since no application was made within prescribed limit, the direction given by the Tribunal is inconsistent with the provisions of the Act and therefore it should be corrected. For this purpose, Revenue filed appeal before the Hon'ble High Court of Rajasthan at Jodhpur

for setting aside the order of the Tribunal. However, the appeal was dismissed as withdrawn. The order recorded was as under :-

> ""Counsel for the appellant is permitted to withdraw this appeal with liberty to file review petition before the Tribunal against the order dated 22.11.2010 in the light of the observations made in para No. 6 of the impugned order.
>
> The appeal is dismissed as withdrawn with the aforesaid liberty.""

In pursuance of the order of the High Court, Revenue first filed an application before the Tribunal on 22.8.2011. The Registry pointed out certain defects vide letter dated 13-1-2012 and those defects were rectified in the present application filed on 26-2-2012. They have also filed an application of condonation of delay in filing application for rectification of mistake since as per provisions of Section 129B(2) of Customs Act, 1962, such application is to be filed within six months from the date of receipt of order of the Tribunal.

3. The ld. A.R. for Revenue submits that the delay in approaching the Tribunal for rectification of mistake occurred on account of the fact that they

were seeking remedy before the High Court and therefore the delay should be condoned.

4. Opposing the prayer ld, Counsel for the respondent – assessee submits that similar situation was considered by the Tribunal in the case of **IVP Limited Vs. CCE** – 2009 (246) ELT 469 in a COD application moved by another applicant-assessee where Revenue insisted that the delay in filing of ROM should not be condoned and the Tribunal held that the ROM application was time-barred. She points out similar decisions in the following cases viz.:-

(1) **CCE V s. K.C. Jain** – 2009 (247) ELT 675.

(2) **Rajan Prints Vs. CCE** – 2012 (276) ELT 381.

5. The counsel points out that by the time Revenue filed appeal before the High Court itself the time period for moving ROM application had expired. Since there is no specific order by the High Court condoning any delay in filing of the application, Tribunal should adopt its earlier orders and reject the application for condoning the delay as time-barred.

6. She also points out that the issue involved in this matter is about appropriate reversal of Cenvat credit for which Government had passed a benevolent legislation in the year 2010 and respondent-assessee has been agitating the injury caused to them under the previous rules for relief. When the Tribunal has ordered that the relief as may be admissible under the amended provisions be made available to them it should not be denied for the technical reason that the application as required under Section 71(2) of Finance Act 2010 was not filed within six months from the date of enactment of Finance Act, 2010.

7. I have considered arguments on both the sides. I find that the issue of condonation of delay in similar situation is already considered by the Tribunal in the case of **IVP Limited** (supra) and it was held that there is no ground to condone such delay. I follow the said decision and reject the ROM application as time-barred.

(Dictated & pronounced in open Court)

22/11/12

(Mathew John)
Member (Technical)

RM