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/1118/2009 , 1131 / 2009 / SM[BR]   Date 14/12/2010

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

To :
C.C.E. RAIPUR

CENTRAL EXCISE BUILDING, DHAMTARI ROAD,
TIKRAPARA, RAIPUR 492001.
C.C.E. RAIPUR   Appellant
Vs
M/S HI TECH POWER AND STEEL LTD.   Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1402 -1403 / 2010-SM[BR] dated 1.12.2010 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent

M/S HI TECH POWER AND STEEL LTD.

VILLAGE PARSADA, TEH,- TILDA, DISTT. RAIPUR (C.G.)
2. Adv. / Consult SHRI BIPIN GARG ADV.
B-1/1289-A, VASANT KUNJ NEW DELHI

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 R.K. STRUCTURES PVT. LTD.
RING ROAD NO. 2, SONDONGRI, RAIPUR[C.G.]

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
Single Member Bench

Excise Appeal No.1118 of 2009-SM
Excise Appeal No.1131 of 2009-SM

(Arising out of Order-in-Appeal No.28/RPR-I/2009 dated 20.2.2009 and No.29/RPR-I/2009 dated 20.2.2009 passed by the CCE (Appeals-I), Raipur)

Date of Hearing/Decision: 01.12.2010

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?	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

CCE, Raipur — Appellant

Vs.

M/s.Hi-Tech Power & Steel Ltd.
M/s.R.K.Structures Pvt.Ltd. — Respondent

Present for the Appellant : Shri K.P.Singh, SDR
Present for the Respondent: Ms.Sukriti Das, Advocate

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

Final **ORDER No.** 1402-1403/2010 SM (BR)

PER: M.VEERAIYAN

1.1 The appeal No.E/1118/09 filed by the department is against the order of the Commissioner (Appeals) No.28/RPR-I/2009 dated 20.2.2009 by which the order of the original authority demanding duty of Rs.93,665/- alongwith interest and imposition of penalty stands set aside. The respondents, in this case, are M/s.Hi-Tech Power & Steel Ltd.

1.2 The appeal No.E/1131/09 is also filed by the department against the order of the Commissioner (Appeals) No.29/RPR-I/2009 dated 20.2.2009 by which the order of the original authority confirming the demand of Rs.46,830/- alongwith interest and imposition of penalty of equal amount were set aside. The respondents, in this case, are M/s.R.K.Structures Pvt.Ltd.

2. Heard both sides.

3. In both the cases, the respondents have received inputs and availed GTA services for bringing the inputs into their factories. Later on, some part of the inputs were removed as such without being put to use in the manufacture of final products. The department issued show cause notices alleging that inasmuch as such inputs removed were not used for manufacture of final products, the credit of service tax attributable to the GTA services utilized for bringing the inputs are not available in terms of Rule 3(5) of Cenvat Credit Rules, 2004. The original authority confirmed the demands of duty, interest and imposed penalties. The Commissioner (Appeals) has set aside the orders of the original authority. Hence, the department is in appeal.

4. Learned SDR reiterated the grounds of appeal. He also drew my attention to the findings and reasonings of the original authority. It was emphasised that when the inputs received in the factory are removed as such, the credit taken on inputs service attributable to such inputs should also be denied on the same reason as applicable to the credit taken on the said inputs.

5. Learned Advocate for the respondents submits that Rule 3 (5) of Cenvat Credit Rule envisage only the payment of amount equal to credit in respect of inputs or capital goods removed as such and it does not envisage the payment of service tax involved. In support

this submission, she relies on the decision of the Tribunal in the case of Bassi Alloys P.Ltd. vs. CCE, Chandigarh reported in 2010 (19) STR 369, the decision in the case of A.R. Casting P.Ltd. vs. CCE, Chandigarh reported in 2010 (19) STR 384, J.S.Khalsa Steel P.Lt. vs. CCE, Chandigarh reported in 2010 (17) STR 517 and the decision in the case of Bansal Alloys & Metals Ltd. vs. CCE, Chandigarh reported in 2010 (250) ELT 529.

6. The above decisions relied upon by the respondents are to the effect that in the absence of express provision for reversal of credit of service tax attributable to input service associated with inputs, the question of reversal of credit of service tax does not arise.

7. In view of the above, I do not find any infirmity in the orders of the Commissioner (Appeals) and the appeals filed by the department are rejected.

(Dictated and Pronounced in the open court)

(M.VEERAIYAN)
MEMBER (TECHNICAL)

mk