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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/984 /2009 – SM[BR]   Date **24/12/2010**

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

To :
M/S REAL ISPAT & POWER LTD.

URLA BENDRI ROAD, BORJHARA, RAIPUR (C.G.)

M/S REAL ISPAT & POWER LTD. Appellant

Vs

C.C.E. RAIPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1474 / 2010-SM[BR] dated 27.10.2010

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. RAIPUR
CENTRAL EXCISE BUILDING,
DHAMTARI ROAD, TIKRAPARA,
RAIPUR 492001.
2. Adv. / Consult
MR.RAMESH NAIR
LAKSHMI VIHAR, AG- 192,
SCHEME NO. 54, VIJAYNAGAR,
3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications. Customs. Excise. I.P. Estate. New Delhi
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
9. Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi - 110005
10. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
13. Office Copy
14. Guard file

Assistant Registrar
(SM Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
Court No.IV

E/Appeal No.984/09-SM

(Arising out of order in original No.Comm/RPR/6/09 dated 15.1.09 passed by the Commissioner of Central Excise, Chandigarh)

Date of Hearing: 27.10.2010

For approval and signature:

Hon'ble Mrs Archana Wadhwa, Member (Judicial)

1. Whether Press Reporters may be allowed to see 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

M/s Real Ispat & Power Ltd — Appellants

Vs

CCE, Raipur — Respondent

Appeared for the Appellant: Shri Anurag Barthwal, Advocate
Appeared for the Respondent: Shri Anil Khanna, SDR

Coram: **Hon'ble Mrs. Archana Wadhwa ,Member (Judicial)**

Final ORDER - 1474/2010 SM (BR)

Per Archana Wadhwa:

As per the facts on record, appellant is engaged in the manufacture of Sponge Iron and Billets classifiable under Chapter 72 of the Central Excise Tariff Act and was availing the facility of Cenvat credit on inputs, capital goods as well as input services.

2. As a result of ~~above~~ audit objection, it was noticed that the appellants are clearing iron ore to their customers without payment of duty in as much as, the appellant was not maintaining separate records of inputs used in the manufacture of dutiable as also exempted products, Revenue entered a view that they are required to pay an amount equal to 10% of the value of exempted goods i.e. ~~either~~ iron ore fines in terms of the provisions of Rule 6(3)(b) of Cenvat Credit Rules. Accordingly, proceedings were initiated against them by way of show cause notice dated 2.7.08 proposing to confirm the duty.

3. The said proceedings resulted in passing of impugned order passed by the Commissioner confirming demand of Rs. 1.31,372/- by denying the modvat credit availed in support of input GTA services on the ground that a part of such services were used in the manufacture of final product.

4. The adjudicating authority also imposed penalty of Rs. 10,000/- on the appellant. The said order is impugned before me.

5. The appellants main contention is that iron ore fines are not different from iron ore. The same emerge during the course of their final product and are rejects and not fines for captive consumption. The GTA services have been used for transportation of iron ore which is crushed in their factory and thereafter screening and sieving is done resulting in emergence of some fines. The fines stand sold by them it cannot be said that the ~~preparation~~ proportionate credit availed of GTA services is ~~recovered~~ liable to be reversed.

6. The learned Advocate appearing for the appellants has drawn my attention to the Tribunal's decision in the case of Assistant Commissioner of Customs & Central Excise, Visakhapatnam Vs Hygrade Pallet Ltd reported in 2010 (249) ELT 266 (Tri. Bang). It stands held that the iron ore chips emerging from sieving and grinding of iron ore fines cannot be held to be a result of a process amounting to manufacture. Clearance of such chips cannot be treated as final product so as to ~~taken~~ reverse an amount of 8% of value of the same in terms of the provisions of Rule 6. As such, submits the learned Advocate ~~for reversing~~ that the ratio of the above decision is clearly applicable to the facts of their case. For better appreciation, para 5 of the said judgment is produced below:-

"We have gone through the facts of the case carefully. In this case, the iron ore fines have been subjected to the process of sieving and grinding. There is force in the contention of the learned advocate that no process of manufacture is involved in getting the iron ore chips. During the process of sieving, particles of dimension larger than 10 mm are discarded. In so far as the manufacture of pellet is concerned, these particles have to be considered as waste. Therefore they cannot be treated as final products manufactured out of cenvat inputs. The application of Rule 6 of the Cenvat Credit Rules in demanding 8% amount does not appear to be correct. In our view, the impugned order of the Commissioner (Appeals) allowing the respondents appeal is legal and proper. We do not find any merit in the grounds of appeal of the Revenue. Hence, the same is dismissed."

7. Apart from the fact that in terms of the above decision, any demand of duty against the appellant or proportionate reversal of cenvat credit cannot be upheld, I find that Commissioner in his impugned order, has held that iron ore fines are generated during the process of manufacture of sponge iron as a bye product. As such, by following the Larger Bench decision in the case of Rallis India Ltd Vs Union of India reported in 2009 (233) ELT 301 (Bom), he has held that such bye products would be covered by the erstwhile Rule 57-CC. In as much as, Rule 57-C is pari material to Rule 6, he has upheld the assessee's liability.

8. I find that the Larger Bench decision of the Tribunal in the case of Rallis India Ltd stands revered by the Hon'ble High Court of Bombay as reported in 23 (301) Bombay. In as much as, the Commissioner (Appeals) decision is based on Larger Bench judgment which stands reversed, it has to be held ~~view~~ that the bye product emerging during the course of manufacture of the final product would not attract the provisions of Rule 6.

9. In view of the foregoing, I set aside the impugned order and allow the appeal with consequential relief to the appellants.

(ARCHANA WADHWA)
Judicial Member

MPS*