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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/361 /2008 – SM[BR] Date 05/01/2010

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

To :
C.C.E. DELHI IV
NEW CGO COMPLEX, NH-IV, FARIDABAD,
HARYANA 121001.

C.C.E. DELHI IV Appellant

Vs

M/S PRECISION CASTINGS Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 10 / 2010 –SM [BR] dated 30.12.2009 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 PRECISION CASTINGS
   14/5, MATHURA ROAD,FARIDABAD.
2. Adv. / Consult SHRI K.L. HANDA CONSULTANT.
   689 SECTOR -16, FARIDABAD.

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 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11 M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
12 Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
13 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15 LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
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Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R.K.Puram, New Delhi-110066.
Principal Bench, New Delhi.

Excise Appeal No.361/08-SM

[Arising out of Order-in-Appeal No.139/CE/Appl/DLH-IV/2007 dt.28.11.07 passed by the Commissioner(Appeals),Faridabad)

For approval and signature

Hon'ble Mr. Rakesh Kumar, 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? :

2. Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? :

3. Whether their Lordships wish to see the fair copy of the order? :

4. Whether order is to be circulated to the Department Authorities: :

CCE, Delhi-IV — Appellant

Versus

M/s. Precision Castings — Respondent

Appearance

Sh. S.K.Bhaskar, DR for Appellant

Sh. K.L.Handa, Consultant For Respondent

Final

Date of decision: 30.12.09
Order No. 10/2010 SM (BR)

Per Rakesh Kumar:

The respondent are engaged in the manufacture of parts and accessories of motor vehicles, Gear and shaft and parts thereof and parts of tanks, locomotive, valves etc. chargeable to Central Excise Tariff under sub-heading 8708.00, 8483.90, 8710.00, 8607.00 and 8481.80 of Central Excise Tariff Act,1985. They were also availing the Cenvat credit in respect of inputs as per the provisions of Cenvat Credit Rules. The respondent were using furnace oil as fuel in relation to manufacture of dutiable as well as exempted finished products and since they were not maintaining separate record of the consumption of furnace oil for dutiable goods and exempted goods, the Department issued a show cause notice seeking reversal of Cenvat credit on the proportionate quantity of furnace oil used in or in relation to the manufacture of exempted goods for the period from Oct'04 to May'06. The total Cenvat credit sought to be reversed was Rs.66092/- out of which Cenvat credit of Rs.25690/- pertained to Oct'04 to June'05 period and the remaining amount of Rs.40402/- pertained to period from July'05 to May'06 period. The show cause notice also sought recovery of interest on wrongly taken of Cenvat credit and also the imposition of penalty under Rule 15. Here it may be mentioned that prior to 16.5.05, Sub-rule (2) of Rule 6 of Cenvat Credit Rules,2004 excluded the "inputs used as fuel" from its purview but w.e.f. 16.5.05, this sub-rule was amended and clause regarding exclusion of "inputs used as fuel" was deleted and thus w.e.f. 16.5.05, the provisions of sub-rule (2) were applicable to all the inputs. The Astt. Commissioner vide order-in-original No.157/AC/2006-07 dt.29.12.06 confirmed the

Cenvat credit demand alongwith interest and imposed penalty of Rs.40402/- under Rule 15(1) of Cenvat Credit Rules,2004. On appeal to Commissioner(Appeals), the Commissioner(Appeals) vide impugned order-in-appeal No.139/CE/Appl/DLH/IV/07 dt.28.11.07, while holding that for the period from 16.5.05 to May'06 the Respondent have to pay an amount as per the provision of sub-Rule (3) of Rule 6 and ~~upheld~~ also upholding the penalty of Rs.40,402/- set aside the demand for period from Oct'04 to 15.5.05. He also directed the Asstt. Commissioner to requantify the demand for period from 16.5.05 to May'06 as per the provision of sub-Rule (2) & (3) of Rule 6, in force during this period. The Revenue is in appeal against the portion of the Commissioner(Appeals)'s order setting aside the Cenvat credit demand for the period from Oct'04 to 15.5.05.

2. Heard both the sides.

2.1 Shri S.K.Bhaskar, learned DR assailing the impugned order with regard to setting aside of the Cenvat credit demand for the period from Oct'04 to 15.5.05, pleaded that the Commissioner(Appeals) while dropping the demand for this period has relied upon the Tribunal's judgments in the case of Indore Steel & Iron Mills Ltd. vs CCE, Indore reported in 2002(147)ELT.611, CCE, Tirunelveli vs Sudarsanam Spinning Mills reported in 2004(166)ELT.461 and Ballarpar Industries Ltd. vs CCE, Nagpur reported in 2006(199)ELT.433; that these judgments of the Tribunal relied upon by the

Commissioner(Appeals) are no longer good law in view of Hon'ble Supreme Court's judgment in the case of CCE vs Gujarat Narmada Fertilizers Co. Ltd. reported in 2009(240)ELT.361(SC) wherein Hon'ble Supreme Court while interpreting the provisions of sub-rule (1) and sub-rule (2) of Rule 6 of Cenvat Credit Rules,2004 during the period prior to 16.5.05 has held that when common fuel inputs are used in or in relation to manufacture of dutiable as well as exempted products, the proportionate Cenvat credit of duty on the fuel inputs used in or in relation to the manufacture of exempted finished products is required to be reversed and that in view of this, the impugned order dropping the Cenvat credit demand for the period from Oct'04 to 15.5.05 is not correct.

2.2 Shri K.L.Handa, Consultant, the learned Counsel for the respondent stating that while the issue involved in this case now stands settled in favour of the Revenue by the judgment of the Hon'ble Supreme Court in the case of Gujarat Narmada Fertilizers Co. Ltd.(Supra), pleaded that the penalty on the respondent may be set aside, as the Hon'ble Supreme Court's in para 13 of its judgment in the case of CCE vs Gujarat Narmada Fertiizers Co. Ltd. (supra) had set aside the penalty on the ground that during that period, there were conflicting decisions on this issue.

2.3 In rejoinder the learned DR pleaded that the penalty imposed by the original adjudicated authority and upheld by the appellate authority is only for wrong availment of Cenvat credit

16/5/05 — May 06

during ~~May'06~~ period, during which, on account of amendment to Rule 6(2) of Cenvat Credit Rules'04, w.e.f. 16.5.05, there was no scope for any confusion.

3. I have carefully considered the submissions from both the sides and perused the records. The dispute in this case pertains only to the period from Oct'04 to 15.5.05 and the point of dispute is as to whether during this period, when the respondent was using fuel inputs - furnace oil in or in relation to manufacture of dutiable finished products as well as fully exempted finished products, whether in respect of clearances of fully exempted finished products, in accordance with the provisions of sub-rule (1) of Rule 6, proportionate Cenvat credit of duty on the fuel inputs used in or in relation to the manufacture of exempted finished products was required to be reversed or not. This issue now stands settled in favour of the Revenue by Hon'ble Supreme Court in the case of CCE vs Gujarat Narmada Fertilizers Co. Ltd.(supra) and in view of this, the impugned order setting aside the demand for this period is not sustainable and hence the same is liable to be set aside. As regards the issue of penalty, I find that the penalty has been imposed by the Asstt. Commissioner only for wrong availment of Cenvat credit for the post amendment period i.e. for the period from July'05 to May'06 when the clause regarding exclusion of "inputs used as fuel" in sub-rule (2) of Rule 6 had been deleted and there was no confusion that when common inputs including fuel inputs are used in or in relation to

the manufacture of dutiable and exempted finished goods and separate records are not maintained in this regard, at the time of clearance of exempted finished products, an amount in accordance with the provisions of sub-Rule (3) was required to be paid. Since for this period the amount in accordance with the provisions of sub-Rule (3) of Rule 6 in respect of clearances of exempted finished products had not been paid, the Asstt. Commissioner besides confirmation of demand of Rs.40402/- also imposed penalty of equal amount and it is this penalty which has been upheld. In view of this, the respondent's plea for setting aside the penalty is not valid. Moreover, the respondent have neither filed the cross objection nor have filed any appeal against the Commissioner(Appeals)'s order.

4. In view of the above discussion, the impugned order setting aside the Cenvat credit demand for the period from Oct'04 to 15.5.05 is set aside and for this period, the order-in-original is restored. However, the Cenvat credit demand for this period has to be re-worked by the original adjudicating authority as in the order-in-original, the demand of Rs.25,690/- was for the period from Oct'04 to June'05. The Revenue's appeal is allowed.

Order dictated in the open Court.

(Rakesh Kumar)
Member Technical

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