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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: ST/580 /2008 – SM[BR] Date 08/01/2010

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

To :
M/S A.R.CASTING (P) LTD.
G.T.ROAD, SIRHIND SIDE, MNADI GOBINDGARH.

M/S A.R.CASTING (P) LTD. Appellant

Vs

C.C.E. CHANDIGARH Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 23 / 2010-SM[BR] dated 22.12.2009 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   C.C.E. CHANDIGARH
   C.R. BUILDING, PLOT NO. 19, SECTOR 17-C, CHANDIGARH 160017
2. Adv. / Consult
   MR.SAURABH BASSI,ADV
   GOLE MARKET, MANDI GOBINDGARH

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 – 110 066.
Principal Bench, New Delhi

COURT NO. IV

Service Tax Appeal No. 580 of 2008 (SM)

[Arising out of the Order-in-Appeal No. 260-CE/CHD/2008 dated 30/04/2008 passed by The Commissioner (Appeals), Customs, Central Excise & Service Tax, Chandigarh.]

For Approval and signature :
Hon'ble Shri 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?	:

M/s A.R. Casting (P) Ltd. Appellant

Versus

CCE and ST, Chandigarh Respondent

Appearance

None – for the Appellant

Shri P.K. Singh, Authorised Representative (SDR) – for the Respondent.

CORAM : **Hon'ble Shri Rakesh Kumar, Member (Technical)**

DATE OF HEARING : 22/12/2009.

Final Order No. 23/2010 SM(BR) Dated : ____________

Per. Rakesh Kumar :-

The appellants are engaged in the manufacture of Non-Alloy Steel Ingots chargeable to Central Excise Duty under Chapter 72 of Central Excise Tariff and they also availed Cenvat credit of various inputs, capital goods, and input services under the provisions of Cenvat Credit Rules. The appellant received certain inputs and besides taking Cenvat credit of Central Excise Duty paid on those inputs also took Cenvat credit of the service tax on the GTA service availed in the transportation of those inputs by road to the factory. The service tax credit in respect of GTA services availed was Rs. 17,262/-. The appellant subsequently cleared those inputs as such but as per the provisions of Rule 3 (5) of the Cenvat Credit Rules reversed only the credit of Central Excise Duty. The Department's view is that at the time of removal of the inputs as such, as per the provisions of Rule 3 (5) of the

Cenvat Credit Rules, the appellant should also have reversed the credit of service tax on the GTA service availed for road transportation of the goods up to the factory. On this objection by the Department, the appellant reversed the credit of service tax on the GTA service. The Assistant Commissioner vide order-in-original dated 3/10/07 confirmed the demand of service tax credit alongwith interest and imposed penalty of equal amount on the appellant under Rule 15 (2) of the Cenvat Credit Rules, 2004. On appeal to Commissioner (Appeals), the Commissioner (Appeals) vide order-in-appeal dated 30th April 2008 upheld the Assistant Commissioner's order. It is against this order of the Commissioner (Appeals) that the present appeal has been filed.

2. None appeared for the appellant. The appellant, however, vide their letter which was received in the Registry on 17th November 2009, requested for decision of this matter on merits, keeping in view of the Tribunal judgment in the case of **Chitrakoot & Power Ltd. vs. CCE, Chennai** reported in **2008 (10) S.T.R. 118,** wherein the Tribunal on this very issue has given a decision in their favour.

3. Heard Shri P.K. Singh, the learned Departmental Representative. He pleaded that sub-rule (5) of Rule 3 of Cenvat Credit Rules provides that when the inputs or capital goods, on which Cenvat credit has been taken, are removed, as such, from the factory, the manufacturer of the final product has to pay an amount equal to the credit availed in respect of such inputs or capital goods, that the term "Cenvat credit" has been defined in sub-rule (1) of Rule 3 of the Cenvat Credit Rules and according to this Rule 3 (1), the Cenvat credit, in addition to the credit of various duties of excise and education cess etc. also includes the credit of service tax, that in view of this, when any cenvated inputs are removed as such, in addition to the credit of duties of excise or education cess etc., the credit, if any availed, of any service tax including education cess paid on the transportation charges for bringing those goods upto the factory ~~[illegible]~~ is also required to be reversed. In view of this, he pleaded that the impugned order is correct and does not merit any interference.

4. I have carefully considered the submissions from both the sides and perused the records.

5. The provisions of sub-rule (5) of Rule 3 of Cenvat Credit Rules, 2004 are reproduced below :-

> "When inputs or capital goods, on which CENVAT credit has been taken, are removed as such from the factory, or premises of the provider of output service, the manufacturer of the final products or provider of output service, as the case may be, shall pay an amount equal to the credit availed in respect of such inputs or capital goods and such removal shall be made under the cover of an invoice referred to in rule 9."

From the plain reading of this sub-rule, it is clear that what is required at the time of removal of any inputs, as such, in respect of which Cenvat credit has been taken, is that an amount equal to the credit availed in respect of such inputs is to be paid. The credit availed in respect of inputs would be only the credit of duties of excise, as there is no mention in this rule that in addition to the credit of the duty of excise, the credit of service tax in respect of services availed in bringing those goods to the factory is also required to be paid. The word "inputs" covers only the input goods, not the input services. I find that same view has been taken by the Tribunal in the case of Chitrakoot & Power Ltd. vs. CCE, Chennai (supra). In view of this, the impugned order is not sustainable. The same is set aside. The appeal is allowed.

(Dictated and pronounced in open court)

(Rakesh Kumar)
Member (Technical)

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