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

Appeal No. E/2185/2009 - EX[DB] WITH E/S/2255/09-EX

Date 07/05/2010

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

To :
M/S RAMDARSHAN ROLLING MILLS
TEJPUR GARABADI, A-B ROAD, RAJENDRA NAGAR,
INDORE(MP)
M/S RAMDARSHAN ROLLING MILLS

Appellant
Vs
C.C.E. INDORE
Respondent

STAY ORDER NO.311/2010-EX

I am directed to transmit herewith a certified copy of **Final order No. 261/ 2010 EX[DB]** dated 06-4-10 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
   C.C.E. INDORE
   MANIK BAGH PALACE, POST BOX NO. 10, INDORE 452001 (M.P.)
2. Adv. / Consult
   MR.ASHUTOSH UPADHYAY, ADVOCATE
   4, KISHAN COLONY-567, M.G.ROAD, OPPOSITE HIGH COURT, INDORE (M.P.)

3 C.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 Office Copy
14 Guard file
15. HON'BLE PRESIDENT.

Assistant Registrar
(Excise Appeal Branch)

16. Tax India Online.Com (P) Ltd.
Unit No.1, 2nd Floor, Vasant Aracade, Nelson Mandela Road,
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17. SH. L.P. ASTHANA, ADV.,
R-163, IIND FLOOR,
G.K. PART-1, N. DELHI-48

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block 2, R.K.Puram,New Delhi-110066
Principal Bench, New Delhi.

E/2185/09 with E/S/2255/09

(Arising out of Order-in-Appeal No.IND-I/45/2009 dt.5.3.09 passed by Commissioner(Appeals), Indore)

For approval and signature:

Hon'ble Mr. Justice R.M.S.Khandeparkar, President
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: :

M/s. Ramdarshan Rolling Mills — Appellants

Versus

CCE, Indore — Respondent

Appearance
Sh. L.P.Asthana, Adv. For Appellants

Shri B.L.Soni, DR for Respondent

Coram: Hon'ble Mr. JUSTICE R.M.S.KHANDEPARKAR, PRESIDENT
Hon'ble Mr. RAKESH KUMAR, MEMBER (TECHNICAL)

Date of hearing: 6.4.2010
Date of Decision: 6.4.2010

Final Order No. 261/10-Ex

Stay order No. 311/10-Ex

Per Rakesh Kumar

The facts leading to this appeal alongwith stay application are, in brief, as under:

1.1 The Appellants are engaged in the manufacture of M.S.Bars chargeable to Central Excise Duty under heading 7214 of the Central Excise Tariff Act held Central Excise Licence. During the period of dispute i.e. 2006-07, they were availing the benefit of SSI exemption under Notification No.8/03-CE. At the time of opting for SSI exemption under Notification No.8/03-CE w.e.f. 1.4.06, the Appellant had reversed the Cenvat credit involved on the cenvated inputs lying in the stock or in process or contained in the finished products lying in stock as on 31.3.06 and out of the total Cenvat credit to be reversed Rs.6,03,462/-, an amount of Rs.2,43,421/- was reversed through RG 23A Part II account and the balance amount of Rs.3,60,041/- was reversed by debit entry No.8 dt.4.4.06 in the PLA. Accordingly w.e.f. 1.4.06, the Appellant started availing the SSI exemption under Notification No.8/03-CE under which, the first clearance upto Rs.one crore were fully exempt from duty. The Appellant crossed the one crore limit on 15.6.06. Though during the period they were availing full duty exemption under the SSI exemption notification, as per the conditions of the notification, they could not avail input duty Cenvat credit, in course of scrutiny of their E.R.I returns for the quarter ending June'06, the Department found that they had taken Cenvat credit amounting to Rs.9,34,306/Accordingly, the Department was of the view that since the Appellant have violated the condition of SSI exemption Notification No.8/03-CE, they would not be eligible for duty exemption in respect of their first Rs.one crore clearances and it is on this basis that a show cause notice dt.9.5.07 was issued to the Appellant for -

(a) recovery of duty of Rs.16,46,041/- alongwith interest on it at the applicable rate, in respect of their clearances from 1.4.06 to 15.6.06;

(b) imposition of penalty on the appellant under Section 11AC of Central Excise Act,1944 as well as under Rule 25 of Central Excise Rules,2002; and

(c) confiscation of the goods under Rule 25 of the Central Excise Rules,2002 removed without payment of duty during the period from 1.4.06 to 15.6.06.

1.2 The show cause notice was adjudicated by the Jt. Commissioner vide order-in-original No.90/JC/CEX/IND/2008-09 dt.25.8.08 by which –

(a) the entire duty demand as made in the show cause notice was confirmed alongwith interest on it at the applicable rate as per the provisions of Section 11AB;

(b) penalty of amount equal to the duty amount confirmed i.e. Rs.16,46,041/- was imposed on the Appellant under Section 11AC of Central Excise Act,1944 and

(c) penalty of Rs.2,50,000/- was imposed on the Appellant company on the ground that they are also liable for penalty under Rule 25 of Central Excise Rules,2002 and goods cleared without payment of duty are liable for confiscation though the same are not available for confiscation.

1.3. The Appellant filed an appeal before the Commissioner(Appeals) against the Jt. Commissioner's order and Commissioner(Appeals) vide order-in-appeal No.IND-I/45/2009 dt.5.3.09 upheld the Jt. Commissioner's order and dismissed the appeal. It is against this order that the present appeal alongwith stay applications have been filed.

1.4. It appears that before the stay application could be disposed of by the Tribunal, the Department issued a letter dt.9.11.09 to the Appellant directing the Appellant to deposit the entre amount of Central Excise Duty within three days of the said communication failing which their properties would be put to an auction. Against this letter of the Department, the Appellant filed a Writ Petition No.8337/2009 before the Hon'ble Madhya Pradesh High Court which was disposed of by the Hon'ble High Court vide order dt.16.11.09 by which Hon'ble High Court directed the Tribunal to make an endeavour to dispose of the appeal by 30.4.2010. The Department was directed not to take any coercive action against the Appellant till the same is disposed off by the Tribunal.

1.5 Though today the matter was listed only for stay, in view of the directions of the Hon'ble High Court in its order dt.16.11.09, the main appeal itself was taken up for final disposal.

2. Heard both the sides.

2.1 Shri L.P.Asthana, Advocate, learned Counsel for the Appellant pleaded that during the period from 1.4.06 to 15.6.06 when the Appellants were availing of SSI exemption and were not supposed to avail any input duty Cenvat credit, due to mistake of the Appellant's clerk, the credit entries regarding the Cenvat credit on the inputs received were made but the Cenvat credit was not utilized; that total credit taken during the period from 1.4.06 to 15.6.06 was Rs.9,34,306/- that on 16.6.06 when the Appellant started paying duty as they had crossed the one crore limit on 15.6.06, they were eligible for Cenvat credit amounting to Rs.8,67,927/- (Rs.8,50,910/- Cenvat duty credit + Rs.17,017/- education cess credit) in respect of the inputs lying in stock at that time, that prior to 16.6.06, the Appellant had reversed the credit of Rs.78,026 (Rs.65,015 + education cess credit of Rs.13,011) and thus in any case, the Cenvat credit already taken by the Appellant by mistake during 1.4.06 – 15.4.06 period was of the amount to which they were entitled when they switched over to duty paying status; that there was no intention to wrongly avail the SSI exemption and also avail input duty credit at the same time, that the Cenvat credit though taken by mistake was never utilized and the same had been declared in the ER-I returns; that in view of this, the Appellant cannot be treated as having availed Cenvat credit during the period when they were availing of full duty exemption; that when the credit had been taken by mistake during the period from 1.4.06 to 15.6.06 and the same was never utilized and stands reversed, it would be wrong to deny the benefit of SSI exemption; that in this regard, reliance is placed on the Tribunal's judgment in the case of Sagar Twisters vs CCE, Mumbai reported in 2005(188)ELT.497 wherein the Tribunal held that when the benefit of exemption under Notification No.4/97-CE was subject to the condition of not availing input duty credit and input duty credit though initially taken was reversed, it would amount to not taking the credit and hence the benefit of exemption under Notification No.4/97-CE cannot be denied and that in view of this, the impugned order is not correct.

2.2 Shri B.L.Soni, learned DR, defended the impugned order reiterating the Commissioner(Appeals)'s findings and emphasized that the SSI exemption is subject to the conditions enumerated in para 2 of the Notification, that as per para 2(iii) of the exemption notification, the exemption is subject to the condition that the manufacturer does not avail the credit of duty of inputs used in the manufacture of specified goods cleared for home consumption and that since in this case, input duty credit had been taken, the condition of the notification has been violated and hence the Appellant would not be eligible for exemption.

3. We have carefully considered the submissions from both the sides and perused the records. The Appellant had started availing of SSI exemption w.e.f. 1.4.06 and before opting for SSI exemption, as per the provisions of Rule 11(2) of the Cenvat Credit Rules,2004, the Cenvat credit involved on the inputs lying in stock or in process or contained in the finished products lying in stock as on 31.3.06 had been reversed and thus as such as on 1.4.06, they had Nil input duty Cenvat credit. The Appellant started availing of full exemption in respect of their clearances from 1.4.06 and crossed the limit of one crore on 15.6.06. While during the period from 1.4.06 to 15.6.06 as per the condition of the exemption notification, the Appellant could not take Cenvat credit, it is seen that in respect of the inputs received during this period, the Appellant did take Cenvat credit which according to the Appellant was due to mistake of their clerk and not due to any malafide intention to wrongly avail of SSI exemption. We are inclined to accept this contention that the Appellant as we find that the taking of cenvat credit in respect of inputs during the period from 1.4.06 to 15.6.06 had been declared in the E.R.I returns and the Department came to know about this only through scrutiny of the ER-

I returns. Moreover, from para 2 of the Joint Commissioner's order dt.25.8.08 it is seen that the total Cenvat credit taken during the period from 1.4.06 to 15.6.06 was – Rs.9,[illegible]/- and when on crossing Rs.one crore limit on 15.6.06, the Appellant started paying duty, they became eligible for credit of the input lying in stock as on 15.6.06, in terms of the provisions of Rule 3(2) of the Cenvat Credit Rules and accordingly, they became entitled for credit of Rs.8,67,927/-, the Appellant instead of making fresh entry of the credit of Rs.8,67,927/- only made a debit entry of the excess credit of Rs.78,026/-. This debit entry cannot be called utilization of wrongly taken credit. We are, therefore, satisfied that input duty credit during the period of exemption had been taken due to mistake and the mistake got rectified when at the time of crossing rupees one crore limit of clearances, and switch over to duty paying status, the Appellant, instead of making credit entry for taking Cenvat credit of duty on the inputs lying in stock or in the process as per the provisions of Rule 3(2), debited the credit of Rs.78,026/- and thereby making the credit taken by them during 1.4.06 to 15.6.06 due to mistake, equal to their credit entitlement under Rule 3(2). In our view, therefore, it would not be correct to deny the benefit of SSI exemption to them. We find that the same view had been taken by the Tribunal in the case of Sagar Twisters vs CCE(supra). We, therefore, hold that the credit entries regarding Cenvat credit made by the Appellant during 1.4.06 to 15.6.06 were due to bonafide mistake which was rectified and for this it could not be correct to deny the benefit of SSI exemption to the Appellant. The impugned order, therefore, is not sustainable and the same is set aside. The appeal is allowed . Since the main appeal has been allowed, the stay application is dismissed as infractuous.

(Operative portion already pronounced in the open Court).

(Justice R.M.S.Khandeparkar)
President

(Rakesh Kumar)
Member Technical

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