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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/114 /2008 – SM[BR] E / CO / 206 / 2008-SM[BR] Date 26/02/2010

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

To :
C.C.E. NOIDA
C-56/42, SECTOR-62, NOIDA-201307

C.C.E. NOIDA Appellant
Vs
M/S POLYTRON & FRAGRANCES INDUSTRIES P LTD Respondent

I am directed to transmit herewith a certified copy of **Final order** No. 263 / 2010 –SM[BR] dated 16.2.2010 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 POLYTRON & FRAGRANCES INDUSTRIES P LTD
   B-70, SECTOR-57, NOIDA.
2. Adv. / Consult S.D.GAUR CONSULTANT.
   SB-108, SHASTRI NAGAR, GHAZIABAD[U.P]

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)
16 Office Copy
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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.114/08 with E/CO/206/08

[Arising out of Order-in-Appeal No.116/CE/Noida/2007 dt.16.10.07 passed by Commissioner(Appeals), Noida)

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, Noida Appellant

Versus

M/s. Polytron & Fragrances Inds(P) Ltd. Respondent

Appearance

Sh. S.K.Bhaskar, DR for Appellant

Sh. S.D.Gaur, Consultant For Respondent

Final Date of decision: 16.2.2010
Order No. 263/2010 SM(BR)

Per Rakesh Kumar:

The facts giving rise to this appeal filed by the Revenue and Cross Objection by the Respondent are, in brief, as under:

The Respondent are manufacturer of Flexible Packaging Laminate, Flexible Packaging Laminate Pouch and Paper coated

Plastic, chargeable to Central Excise Duty under Chapter 39 and 48 of the Central Excise Tariff. They had purchased duty paid capital goods during the period from Oct'99 to Nov'03, in respect of which they had taken capital goods Cenvat credit as per the provisions of Cenvat Credit Rules. The total value of the capital goods purchased was Rs.52,87,448/-, the bulk of the purchases being during Oct'99 to Dec'2000 period and total capital Cenvat credit taken was Rs.8,44,429/-. In Sept'2004, there was a fire accident in the factory in which there was total loss of plant & machinery as well as of the stock of raw-material and finished goods. The "burnt capital goods" were sold in Feb.,2005 in Rs.3,30,000/- and at the time of sale, duty amounting to Rs.60,384/- was paid under two invoices. The Department was of the view that the capital goods have been removed as such and accordingly, in accordance with the provisions of Rule 3(5) of Cenvat Credit Rules,2004, at the time of sale of the "burnt capital goods", the credit originally taken should have been reversed. It is on this basis that a show cause notice dt.20.2.06 was issued to the Respondent for demand of differential duty amounting to Rs.7,85,289/- as per the provisions of Rule 3(5) of Cenvat Credit Rules,2004 alongwith interest on this amount and also for imposition of penalty on the Respondent under Rule 15 of the Cenvat Credit Rules,2004 read with Section 11AC of Central Excise Act,1944. The Additional Commissioner vide order-in-original dt.24.11.05 confirmed the demand of Rs.7,85,289/- alongwith interest and imposed penalty of equal amount on the

Respondent under Rule 15 of the Cenvat Credit Rules,2004 read with Section 11AC of Central Excise Act for contravention of the provisions of Rule 3(5) of Cenvat Credit Rules. The Respondent filed an appeal before the Commissioner(Appeals) against the Addl. Commissioner's order. Before the Commissioner(Appeals), it was pleaded that in the fire accident, with took place in Sept'04, the entire plant and machinery was destroyed, that the plant and machinery had been sold as scrap and that in view of this, the clearance of the burnt plant and machinery cannot be said to be a removal of cenvated capital goods as such. The Commissioner(Appeals) vide order-in-appeal No.116-CE/Noida/2007 dt.16.10.07 set aside the adjudication order and allowed the appeal. It is against this order that the Revenue has come in appeal before the Tribunal and the Respondent have filed the Cross Objection.

3. Heard both the sides.

3.1 Shri S.K.Bhaskar, learned DR, pleaded that the goods sold described in the sales invoices as "burnt plant and machinery", which shows that the goods had retained their identity as capital goods; that it is for this reason only that the original adjudicating authority had held that this is a case of removal of the cenvated capital goods as such; that during the period of dispute, as per the provisions of Section 3(5) of Cenvat Credit Rules,2004, in the event of removal of any cenvated capital goods as such an amount equal to the credit was required to be paid; that the Commissioner(Appeals) has relied upon the Tribunal's judgment in the case of Madura Coats Pvt. Ltd. vs CCE reported in 2005(190)ELT.450 but the Larger Bench of the Tribunal in the case of Modernova Plastyles Pvt. Ltd. vs CCE, Raigad reported in 2008(232)ELT.29 has held that the Expression 'as such' in Rule 4(5)(a) of Cenvat Credit Rules,2004 does not have any connection with capital goods being new, unused or used and covers both capital goods cleared without being put to use as well as after being to be used; that in view of this at the time of clearance of Cenvat capital goods, even if after use, in accordance with the provisions of Rule 3(5) of Cenvat Credit Rules, an amount equal to the credit originally taken is required to be reversed and in view of this, the impugned order is not correct.

3.2 Shri S.D.Gaur, Advocate, the learned Counsel for the Respondent, pleaded that on account of fire accident in the factory in Sept.'04, the intimation about which had been given to the Department on 15.9.04, there was total loss of the plant and machinery; that machinery was no longer capital goods capable of being used for manufacture of any product and for this reason, the same had been sold as scrap; that in view of this, the machinery which has been sold as scrap, had lost its identity as capital goods and, therefore, this could not said to be a case where cenvated capital goods have been removed as such and that he relies upon the Tribunal's judgment in the case of CCE vs Geeta Inustries reported in 2009(249)ELT.99 wherein the Tribunal had upheld the payment of duty on transaction value in the case where the cenvated capital goods are sold after some use. He pleaded that the sale of the burnt plant and machinery was a bonafide sale and no amount over and above that mentioned in the invoice had been received by the Respondent and in view of this, duty had been correctly paid.

4. I have carefully considered the submissions from both the sides and perused the records. The capital goods namely D.G.Sets, BST Sayona Pneoumo Line/edge web guiding system, Tension Control System, 30" web width 8 color roro-gravure printing machine, Lamination Machine, 30" Slitter rewinder machine, Shrouded bars & accessories and 30 KVA sllient DG Sets had been purchased during Oct.'99 to Nov'2003 period, the bulk of the purchases being during Oct'99 to Dec'04 and total Cenvat credit originally taken was Rs.8,44,489/-. There is no dispute that there was fire accident in the Respondent's factory in Sept'04. The Respondent sold the damaged machinery described as "burnt plant & machinery alongwith accessories" in Feb'05 for total amount of Rs.3.30,000/- on which duty amounting to Rs.60,384/- was paid. The point of dispute is as to whether at the time of clearance of burnt/damage machinery the amount equal to the Cenvat credit originally taken was required to be paid. According to the department, the machinery was not a total scrap and that this is a case of clearance of plant and machinery as such. However, I find that the Department does not dispute that there was fire accident in the Respondent's factory in Sept.'04 in which the according to the Respondent, there was total loss of plant and machinery. The fact that the machinery

purchased in about Rs.52 lakhs during 1999-2000 period had been sold in Feb'05 in Rs.3,30,000/- indicates that the same had been sold as scrap only. There is no evidence produced by the Department that the machinery sold was not scrap but was usable capital goods. In view of this, it cannot be said that the capital goods had been removed as such. The duty has, therefore, been correctly paid on the goods on the transaction value. I, therefore, do not find any infirmity in the impugned order. The Revenue's appeal is dismissed. The Cross Objection filed by the respondent also stands disposed of.

Order dictated in the open Court.

(Rakesh Kumar)
Member(Technical)

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