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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/2104/2007 – SM[BR] Date 05/03/2010

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

To :
M/S RFH METALS CASTINGS PVT. LTD.
B-11 (B?&C), MALVIYA INDL. AREA, JAIPUR

M/S RFH METALS CASTINGS PVT. LTD. Appellant
Vs
C.C.E. JAIPUR I Respondent

I am directed to transmit herewith a certified copy of **Final order** No. 276 / 2010 –SM[BR] dated 2.3.2010 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. JAIPUR I
N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.
2. Adv. / Consult
SHRI BIPIN GARG ADV.
B-1/1289-A, VASANT KUNJ NEW DELHI
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 AND SERVICE TAX APPELLATE TRIBUNAL,
NEW DELHI, PRINCIPAL BENCH NEW DELHI

Appeal No.2104 of 2007- SM (BR)

[Arising out of Order-in-Appeal No.41/GRM/CE/JPR-I/2007 dated 27.02.2007 passed by the Commissioner of Central Excise (Appeals), Jaipur]

Date of Hearing/ Decision:02.03.2010

For approval and signature:

Mr. M. Veeraiyan, Member (Technical)

1. Whether Press Reporters may be allowed to see CESTAT (Procedure) Rules, 1982. Yes
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : Yes
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. R.F.H. Metals Castings Pvt. Ltd. ...Appellants
(Rep. by Shri Bipin Garg, Advocate)

Vs.

CCE, Jaipur-I ...Respondent
(Rep. by Shri V.K. Saxena, Jt.CDR)

CORAM: **Hon'ble Mr. M. Veeraiyan, Member (Technical)**

Final Order No. 276/2010 SM (BR)/Dated:02.03.2010

Per M. Veeraiyan:

This is an appeal against the order of the Commissioner (Appeals) No.41/GRM/CE/JPR-I/2007 dated 15.02.2007.

2. Heard both sides.

3. The relevant facts are that the appellants are engaged in the manufacture of steel tubes and pipes. They used various inputs like CR Sheets, HR Sheets, Plastic Granules, Steel tubes, Brass Tubes, etc. The present dispute relates to Steel Tubes and Pipes, which have been procured as inputs and which were cut into desired length and electroplated and exported. Show cause notice was issued holding that mere cutting of Tubes and Pipes to desired length and electroplating would not amount to manufacture and the final product "electroplated pipes and tubes" were not arising out of manufacture and, therefore, no new excisable goods were manufactured and, therefore, credit availed on such steel tubes/pipes was irregular. Accordingly, show cause notice proposed recovery of Rs.4,22,926/- along with interest under Section 11 AB of the Central Excise Act and proposed imposition of penalty under Rule 13 of Cenvat Credit Rules, 2002. Original Authority dropped the proceedings and he relied on the decision of the Tribunal in the case of the appellants reported in 2005 (184) E.L.T. 194 (Tribunal-Delhi). On appeal by the Department, the Commissioner (Appeals) set aside the order of the Original Authority and allowed the appeal. He held that the Tribunal's order dated 18.02.2005 relates to earlier period concerning interpretation of Rule 57 F (4).

4. Ld. Advocate submits that the steel tubes and pipes were subject to certain processes and finally exported. Denial of credit on the duty paid

on steel tubes and pipes will amount to taxing the inputs, which has gone into product, which has been exported. The decision of the Tribunal in their own case relating to earlier period takes into account that even inputs could have been exported under bond without payment of duty and, therefore, the Commissioner (Appeals) was wrong in ignoring the decision of the Tribunal.

5. Ld. Jt. CDR reiterates the findings and reasoning of the Commissioner (Appeals).

6. I have carefully considered the submissions from both sides. Undisputedly, steel tubes and pipes ~~were~~ procured by the appellants and the "final product" viz. the electroplated steel tubes and pipes ~~and the~~ ~~input~~s fall under same Chapter sub-heading 7306.90. According to the Department, the process of cutting and electroplating does not amount to manufacture and does not result in emergence of a new excisable product other than the raw materials used. In the absence of special definition relating to manufacture treating such cutting and electroplating as amounting to manufacture, the submission on behalf of the Department merits consideration and acceptance. On the same ground, if no new product emerged then what has been cleared by the appellant (in this case, for export) has to be treated as the very same input, which has been procured by them. In such a situation, such input can be cleared on reversal of the Cenvat credit taken on them. Further, the submission of

the ld. Advocate that in respect of the products exported the relief available is in respect of duty paid on the inputs as well as on the final products deserves to be appreciated.

7. Under these circumstances, the ratio laid down by the Tribunal in the case of the appellant themselves is applicable to the present case, even though, the earlier decision was rendered in the context of Rule 57 F(4).

8. Incidentally, the Original Authority has dropped the proceedings on the show cause notice, which proposed recovery of duty, interest and imposition of penalty. The Commissioner (Appeals) merely set aside the order of the Original Authority and has not quantified any dues from the appellants.

9. In view of the above, the order of the Commissioner (Appeals) is set aside and the order of the Original Authority is restored. The appeal is allowed with consequential relief as per law.

Order dictated & pronounced in open court on 02.03.2010.

(M. Veeraiyan)
Member (Technical)

Ckp.