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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/2157/2008 – SM[BR] Date 09/09/2010

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

To :
M/S SHAHABAD COOP. SUGAR MILLS LTD.,

DIRECTOR, SHAHABAD, DISTT. KURKSHETRA
(HARYANA)

M/S SHAHABAD COOP. SUGAR MILLS LTD., Appellant

Vs

C.C.E. PANCHKULA Respondent

I am directed to transmit herewith a certified copy of **Final order** No. 966 / 2010-SM[BR] dated 27.8.2010 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. PANCHKULA

SCO NO. 407 AND 408, SECTOR 8, PANCHKULA (HARYANA) 134119.

2. Adv. / Consult

MR.O.P. BATHLA

M.D. 57, ELDECO MANSIONZ, SOHNA ROAD, SECTOR 48, GURGAON 122002

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 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 TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
14 Office Copy
15 Guard file

Assistant Registrar
(SM Appeal Branch)

APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. IV

Excise Appeal No. 2157 of 2008-SM(BR)

[Arising out of Order-in-Appeal No. 154/ANS/PCK /2008 dated 23.7.2008 passed by the Commissioner of Central Excise (Appeals), Gurgaon.]

For approval and signature:

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

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1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the 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

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M/s. Shahabad Coop. Sugar Mills Ltd. — Appellants

Vs.

Commissioner of Central Excise
Panchkula — Respondent

Appearance: Shri O.P. Bathla, Consultant for the Appellants
Shri K.P. Singh, SDR for the Respondent

Date of Hearing/decision : 27.08.2010

Final **ORAL ORDER NO.** 966/2010 SM (Br)

Per M. Veeraiyan:

This is an appeal against the order of the Commissioner (Appeals) No. 154/ANS/PCK /2008 dated 23.7.2008.

2. The matter is before the Tribunal for the second time having been remanded by the Final Order No. 40/07-SM(BR) dated 29.12.2006 to the original authority.

3. Heard both sides.

4. The relevant facts, in brief are that the appellant sold various types of waste and scrap in the form of MS scrap, CI scrap, CS Scrap, Brass Tube, Bearing, HDPE Bags/ old Polythene sheets, empty drums, old tube and vehicles parts, old washed gunny bags, MS patti, SS Screen, Nickel Screen during the year 1998-99, 1999-2000 and 2000-2001. The value of waste and scrap sold was Rs.24,35,343/- and the duty involved was Rs.3,89,655/-. The original authority adjudicated the matter and confirmed the demand of duty which was upheld by the Commissioner (Appeals) vide order dated 17.12.2004. On appeal by the party, the matter was remanded to the original authority with the following directions:

> "5. I find that the appellant in reply to show cause notice, has specifically submitted that the scrap is of capital goods regarding which no credit has been taken. The appellants also produced invoice-cum- challans of SAIL to show that the goods were purchased prior to 31.3.2004 and no credit has been availed in respect of these goods. The appellant also in RG 23 Part I and II, clearly mentioned that no credit has been taken in respect of capital goods. In these circumstances, the appellant produced evidence in support of their claim which was not considered by the lower authorities, hence the

> matter requires reconsideration. The impugned order is set aside and the issue is remanded to the adjudicating authority for fresh decision after giving an opportunity of hearing to the appellants. The appeal is allowed by way of remand."

In the denovo proceedings original authority confirmed the duty of Rs.1,39,536/- in respect of MS scrap, CI scrap, CA scrap and brass tubes valued at Rs.8,72,099/- cleared during the period 1998-1999 and 1999-2000. He also imposed penalty of equal amount. Order of the original authority stands upheld by the Commissioner (Appeals).

5. Learned Consultant for the appellants submits that the appellants took credit on the capital goods like MS plates and angles first time on 18.8.2001. That being the case, whatever scrap cleared by them during the period prior to 1.4.2000 were clearly arising out of capital goods on which they had not taken any credit. That being the case, demand of duty on the waste and scrap of capital goods as if arising out of capital goods on which credit was taken was not justified.

6 Learned SDR submits that in terms of order of the Tribunal, the appellants have failed to produce the evidence for co-relating that the impugned waste and scrap cleared by them relating to which all the capital goods are covered by the connected duty paying documents. He, therefore, seeks upholding the order of the Commissioner (Appeals).

7.1 I have carefully considered the submissions from both sides. I find that the demand stands confirmed by the original authority on the waste and scrap of capital goods cleared prior to 1.4.2000 under provisions of Rule 57S

(2)(c) of erstwhile Central Excise Rules 1944 as mentioned in para 16 of his order. The Rule 57 S applies to cases of capital goods and waste and scrap arising out of capital goods on which credit has been taken under Rule 57Q. It is settled law that to invoke the provisions of Rule 57S, the department has to prove , in the first place, that the assessee has taken credit on the capital goods. In the present case, no such evidence has been relied upon by the department. On the other hand, the appellants have made submissions that they have taken the credit on the capital goods only from 18.8.2001 as recorded by the original authority in para 11 of his order. Further, the appellants have produced the original invoices issued by M/s. SAIL during the relevant period in their favour and the original authority after perusing the same, held that the assessee failed to produce original records co-relating the scrap with the goods as per the invoices. The expectation of the production records for waste and scrap arising out of capital goods is not reasonable. The appellants are a manufacturer of sugar and molasses. When the appellants have sold the waste and scrap prior to 31.3.2000 and when the appellants have claimed that they have taken credit on capital goods only from August, 2001 on capital goods which does not stand refuted, the question of invoking 57S and demand of duty on waste and scrap undisputedly, arising out of used capital goods does not arise.

7.2 In the previous round of litigation before the Tribunal, the appellants have claimed that RG 23 Part I and II maintained by them clearly mentioned that no credit has been taken in respect of capital goods. This is a simple fact which could have been verified and a clear finding should have been recorded by the authorities below. When specific direction was given by the Tribunal to consider this claim of the appellants, the issues have been side tracked by the authorities below without giving a finding on this claim.

8. The stipulations in the earlier order of the Tribunal is not for co-relating any particular scrap or waste as arising out of any particular capital goods with the connected purchase invoices. The issue that was required to be considered was whether the waste and scrap have arisen out of capital goods on which credit has been taken by the appellants. The burden is on the department to prove that the credit on the said capital goods have been taken before invoking Rule 57S of Central Excise Rules, 1944. The evidence adduced by the appellants are clearly pointing to their not availing any credit on the capital goods for the period prior to 31.3.2010. The submission by the consultant that during the disputed period defacement of invoices on which credit was taken was mandatory and that invoices produced by them before the original authority were invoices which were not defaced and the same is an evidence to show that no credit was taken is also valid.

9. Therefore, the appellants have made out a case for interfering with the order of the Commissioner (Appeals). The order of the Commissioner (Appeals) is set aside and appeal is allowed with consequential relief as per the law.

(M. Veeraiyan)
Member(Technical)

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