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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/9 /2009 – SM[BR] Date 23/09/2010

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

To :
M/S VISHAL PIPES LTD.

C-23, INDUSTRIAL AREA, SIKANDRABAD,
BULANDSHAHAR. (U.P.)
M/S VISHAL PIPES LTD. Appellant

Vs

C.C.E. NOIDA Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1022 / 2010-SM[BR] dated 14.9.2010 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. NOIDA

C-56/42, SECTOR-62, NOIDA-201307
2. Adv. / Consult SHRI VISHAL AGARWAL , EMPL.OF.CO.
M/S APPELLANT:-----------------------------

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)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R. K. Puram, New Delhi
COURT-III

Date of hearing: **14.9.2010**

Excise Appeal No. 9 of 2009-SM

[Arising out of Order-in-Appeal No. 115/CE/APPL/Noida/08 dated 30.9.2008 passed by the Commissioner (Appeals), Central Excise, Noida]

For approval and signature:

Hon'ble Mr. M. Veeraiyan, 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.	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 Vishal Pipes Ltd. Appellant

Vs.

CCE, Noida Respondent

Appearance:

Appeared for the Appellant - Shri Vishal Agarwal, Empl. of Co.

Appeared for the Respondent - Shri R.K. Gupta, SDR

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

Final Order No. 1022/2010 SM (BR)

Per M. Veeraiyan:

This is an appeal against the order of the Commissioner (Appeals) No. 115/CE/APPL/Noida/08 dated 30.9.2008.

2. Heard both sides.

3. The appellants are engaged in the manufacture of black and galvanized steel pipes and are availing Cenvat credit on inputs in the manufacture of final products. The appellants have also undertaken manufacture on job work basis such galvanized steel pipes on the material received from principal manufacturer. The original authority holding that the appellants have used inputs like furnace oil, Greece and HCL in the job work and cleared such final products without payment of duty to the persons who supplied the material held that in terms of Rule 6 of Cenvat Credit could not be allowed and accordingly demanded duty of Rs.4,01,652/- along with interest and imposed equal amount as penalty. Commissioner (Appeals) has upheld the order of the original authority.

4. Ld. Director of the appellant-company submits that the appellants have received materials from principal manufacturer under Notification No. 214/86 dated 25.3.1986. The principal manufacturers have taken credit of duty paid on material like zinc and steel tubes and pipes. The appellants have undertaken the processes as job worker. They have used, during the said job work duty paid furnace oil, Greece, HCL etc. Since the processed materials have been sent back to the principal manufacturer who were discharging duty at their end, the credit availed on input used in job work could not be denied to them.

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

6. I have carefully considered the submissions from both sides and perused the record.

7. At the outset, it is to be noted that Notification No. 214/86 dated 25.3.1986 is a special kind of notification. It does not exempt the goods manufactured by the job worker unconditionally. It merely postpones the time of payment of duty and also shifts the duty liability form the job worker, (who is actually a manufacturer) to the principal manufacturer (who supplied the raw material). Therefore, to treat the goods which have been cleared by job worker working under 214/86 as exempted goods is not justified. It is not in dispute that the supplier of input in this case has taken credit on input like zinc, steel pipes and tubes. If the final products cleared by the job worker are exempted, the question of granting credit to principal manufacturer does not arise.

8. The authorities below while holding that the appellants have not fulfilled the conditions of Notification No. 214/86, have not denied the benefit of the said notification as they have not demanded duty on the entire value of final products cleared by job worker including the value of inputs supplied by the principal manufacturer. Apparently, the finding that they have not fulfilled the conditions of notification 214/86 and the course of action adopted.are found to contrary to each other.

9. In the given facts of the present case, the goods cleared by the appellants under 214/86 cannot be treated as exempted goods and, therefore, the question of applying Rule 6 of the Cenvat Credit Rules does not arise. Therefore, there is no basis for demanding duty by disallowing credit attributable to materials used by the job worker (the appellant). Therefore the orders of the authorities below are set aside and appeal is allowed with consequential relief as per law.

(Dictated & pronounced in open Court)

(M. VEERAIYAN)
MEMBER (TECHNICAL)

RM