

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/150 /2008 – SM[BR]

Date 08/10/2010

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

To :
M/S JAIMURTY MINERALS & CHEMICALS PVT. LTD.
81-82, INDUSTRIAL ESTATE, PAONTA SAHIB, DISTT.
SIRMOUR, HIMACHAL PRADESH.
M/S JAIMURTY MINERALS & CHEMICALS PVT. LTD.

Appellant

Vs

Respondent

C.C.E. CHANDIGARH

I am directed to transmit herewith a certified copy of Final order No. 1109 / 2010-SM[BR] dated 29.9.2010
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. CHANDIGARH

C.R. BUILDING, PLOT NO. 19, SECTOR 17-C, CHANDIGARH 160017

2. Adv. / Consult

MR.S.P. AGNIHOTRI, CONSULTANT

SHOP NO. 8, YASWANT APARTMENTS, NEAR POST OFFICE, RAHA- 402109 (MAHARASHTRA)

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 Publications 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.

Date of hearing/decision 29.09.2010

For approval and signature:

Hon'ble Shri Justice R.M.S. Khandeparkar, President

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?	No
3	Whether Their Lordships wish to see the fair copy of the Order?	See
4	Whether Order is to be circulated to the Departmental authorities?	✓

Excise Appeal No. 150 of 2008-SM

[Arising out of order-in-appeal No. 551/CE/REV/CHD/2007 dated 02.11.2007 passed by the Commissioner of Central Excise (Appeals) Chandigarh]

M/s Jaimurty Minerals & Chemicals Pvt. Limited

Appellant

Vs.

CCE, Chandigarh

Respondent

Appearance:

Rep. by Sh. S.P. Agnihotri, Consultant for the Appellants.

Rep. by Sh. R.K. Gupta, DR for the respondent.

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

Final order no - 1109/2010 SM (BY)

Per: Justice Sh. R.M.S. Khandeparkar:

Heard the learned Advocate for the appellants and DR for the respondent.

2. The present appeal arises from order dated 05.11.2007 passed by the Commissioner (Appeals) Chandigarh. By the impugned order, the appeal filed by the department against the order passed by the adjudicating authority has been allowed and the order of the adjudicating authority has been set aside, while holding that the appellants had wrongly availed the cenvat credit as was sought to be alleged by the department in the show cause notice dated 29.10.2004. The Assistant Commissioner, Shimla by his order dated 01.03.2007, had dropped the proceedings in relation to demand of Rs. 3,21,270/- which was made under show cause notice dated 29.10.2004.

2. The appellants are engaged in manufacture of calcium carbonate classifiable under chapter sub-heading 2836.90 of the first Schedule to the Central Excise Tariff Act, 1985. It is the case of the department that in the course of audit it was observed that the appellants were availing cenvat credit on M.S. plates, beam, channel, angle, tubes, joist, M.S. bars etc which were used in their workshop for repair of the machinery. Consequently, denying the said credit, a show cause notice came to be issued. The proceedings were contested by the appellants raising various contentions including that the goods were either used for fabrication of the machinery or parts thereof in the factory and not for repairs and that the same was ascertained by the Superintendent during his visit to the premises pursuant to the request for the same. It is further case of the appellants that the chart annexed to the show cause notice clearly disclosed that various items in large quantity were consumed by the appellants in their factory and the quantum of credit earned thereon apparently disclosed that the goods of such a large quantity could not have been used for mere repairs of the machinery.

The Commissioner (Appeals) without considering this aspect merely observing that the case of the appellants is covered by the definition of the capital goods under rule 2(b) of the Cenvat Credit Rules and, therefore, the appellants were not entitled for availing the cenvat credit and with this observation the credit is sought to be denied to the appellants.

3. The records undisputedly disclosed that in the course of the proceedings Superintendent had visited the factory premises. In relation thereto, there was specific point raised by the appellants that the Superintendent was satisfied about the use of the items for fabrication and for other purposes and that the same were not used for repairs of the machinery. The order of the Commissioner (Appeals) however, does not disclose any reference either to any such report by the Superintendent or consideration of the contention sought to be raised in that regard by the appellants.

4. As rightly pointed out by the learned Advocate for the appellants, the chart annexed to the show cause notice apparently discloses that the cenvat credit was sought to be availed in relation to seamless steel tubes. The credit so availed was Rs. 18,940/-, in relation to M.S. plate credit availed was Rs.26,385/-, Rs. 30,384/-, Rs. 11,641/-, Rs. 746/- and Rs. 2216/-. Similarly, in relation to the M.S. channel, credit availed was Rs. 1721/-, Rs. 2342/-, Rs.9803/- and Rs. 3005/-. There is also a product like resin which was used for water treatment in order to reduce the hardness of the water on which credit to the tune of Rs. 3360/- was availed. The quantum of credit availed on various items therefore discloses voluminous quantity of such items utilized in the factory of the appellants. The materials on record nowhere disclose as to what was the investigation carried out by the department to

ascertain ^{whether} ~~where~~ all these materials were used in the repairs of the machinery or part thereof was used for some other activity. It was absolutely necessary for the department to reveal the same in view of specific defence which was raised by the appellants that the items were used in fabrication of machinery and not in case of repairs of the machinery and further that the same was verified by Superintendent and factum of visit of Superintendent is nowhere found to have been disputed by the department.

5. Besides, bare perusal of the impugned order would justify the interference therein by the Tribunal. In fact, in the impugned order, the first para thereof relates to fact of issuance of show cause notice, second para relates to the grounds sought to be raised by the appellants against the order of the adjudicating authority, and third para relates to the details of the proceedings which took place at the time of personal hearing, and in fourth para of the order, it has been observed thus:-

“4. I have examined the case records and submissions made by the respondents. The department is objecting to the admissibility of cenvat credit on the impugned goods as capital goods (spares) on the ground that the adjudicating authority relied upon the judgment of Hon'ble Tribunal which were based on old definition of capital goods given in explanation to Rule 57Q. Reliance is also placed upon the judgment of the Appellate Tribunal in the case of CCE Chandigarh vs. Modern Steels Ltd. -2007 (078) RLT 0499 whereunder it was held that the definition of capital goods in explanation to Rule 2(b) of the Cenvat Credit Rules, 2002. I note that in the case of respondents the definition of capital goods under rule 2(b) of the Cenvat Credit Rules, 2002 is attracted. Therefore, the case laws referred to by the respondents are not applicable in the facts and circumstances of the case since those relate to the old definition of capital goods under Rule 57Q as held by the Hon'ble Tribunal in the case of Modern Steels Ltd.”.

6. Having so observed the Commissioner (Appeals) proceeded to hold that the adjudicating authority had wrongly allowed the cenvat credit and therefore the order appealed was set aside. The order neither discloses consideration of the facts of the case nor consideration of rival contentions.

Merely by referring to the decision in the matter of CCE Chandigarh vs. Modern Steels Ltd. -2007 (078) RLT 0499 and observing that the appellants were not entitled to avail the credit, the entire appeal has been disposed of. Apparently, it is a non speaking order.

7. For the reasons stated above, therefore, the impugned order cannot be sustained and liable to be set aside and matter remanded to the Commissioner (Appeals) to decide the same afresh after considering the rival contentions and bearing in mind the observations herein above. The appeal accordingly is allowed, the impugned order is set aside and matter is remanded to the Commissioner (Appeals) to decide the same afresh in accordance with provisions of law.

[Justice R.M.S. Khandeparkar]
President

/Pant/