

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Appeal No. E/2620/2009 - EX[DB]

Date 28/04/2010

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

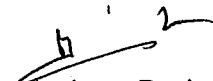
To :
M/S GREENPLY INDUSTRIES LTD.
E-176-179, PHASE-II, RIICO INDUSTRIAL AREA,
BEHROR (ALWAR).
M/S GREENPLY INDUSTRIES LTD.

Appellant
Vs
Respondent

C.C.E. JAIPUR I

I am directed to transmit herewith a certified copy of Final order No. 211/2010-
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944

EX[DB] dated 15.3.10


Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent

C.C.E. JAIPUR I

N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.

2. Adv. / Consult L.P. Asthana, R-163, IInd Floor, GK. I, N. 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 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 Office Copy

14 Guard file

15. Hon'ble President.


Assistant Registrar
(Excise Appeal Branch)

16. Tax India Online.Com (P) Ltd.
Unit No.1, 2nd Floor, Vasant Aracade, Nelson Mandela Road,
Vasant Kunj, New Delhi-70

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

Date of hearing/decision: 15.03.2010

For approval and signature:

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

Excise Appeal No. 2620 of 2009

[Arising out of Order-in-Appeal No. 118(DK)CE/JPR-I/2009 dated 19.06.2009 passed by the Commissioner, Central Excise (Appeals), Jaipur].

M/s Greenply Industries Limited

Appellants

Vs.

CCE, Jaipur

Respondent

Appearance: Rep. by Sh. L.P. Asthana with Sh. Abhishek Jaju,
Advocates for the appellants.
Rep. by Sh. B.L. Soni, DR for the respondent

Coram: Hon'ble Sh. Justice R.M.S. Khandeparkar, President
Hon'ble Sh. Rakesh Kumar, Member (Technical)

FINAL Oral order No. 211/10 - EOP

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

Heard. This appeal has been heard in pursuance of order passed today in Stay application No. 2701 of 2009.

2. The appellants challenge the order dated 19.06.2009 passed by the Commissioner (Appeals), Jaipur whereby he has dismissed the appeal filed by the appellants. The said appeal was filed against the order dated 30.06.2008 passed by the Additional Commissioner, Jaipur who had confirmed the demand of Rs. 11,07,117/- against the appellants and had ordered the recovery thereof under Rule 14 of the CENVAT Credit Rules, 2004 read with Section 11A of the Central Excise Act, 1944 alongwith interest and had also imposed equal amount of penalty. Since the appeal against the same before the Commissioner (Appeals) did not yield fruitful result, the appellants have approached this Tribunal by this appeal.

3. The appellants are engaged in manufacture of decorative plywoods, paper based decorative laminate sheets, aluminium clad laminates and electric insulators, other laminated boards and had cleared capital goods namely "short cycle press machine" under invoices Nos. 4325, 4326 and 4327 dated 04.10.2006. While accusing the appellants of short payment of duty to the tune of Rs. 11,07,117/-, a show cause notice came to be issued to the appellants which was contested by the appellants. It is undisputed fact that the appellants had cleared "short cycle press machine" to their another unit located at Rudrapur under the said invoices on payment of duty of Rs.6,88,000/-. It is also undisputed fact that while procuring the said capital goods, the appellants had availed the credit to the tune of Rs. 17,95,117/-. It is the case of the Department that though the amount of duty paid was only Rs. 6,88,000/-, the credit has been availed to the tune of Rs. 17,95,117/- and hence the appellants have violated the provisions of Rule 3(5) of the

CENVAT Credit Rules 2004 and thereby have evaded the payment of duty to the tune of Rs.11,07,117/- which is difference between the amount of credit availed on the said goods by the appellants and the duty paid at the time of its removal.

4. Learned Advocate appearing for the appellants while relying upon the decision of the Tribunal in the matter of **Cummins India Limited vs. CCE, Pune-III** reported in 2007 (219) ELT 911 (Tri.-Mumbai) upheld by the Bombay High Court reported in 2009 (234) ELT 120, as also in the matter of **Commissioner of C.Ex. Chandigarh vs. Raghav Alloys (P) Ltd.**, reported in 2009 (242) ELT 124, **CCE, Kanpur vs. Geeta Indus. (P) Ltd.**, reported in 2009 (95) RLT 622 (CESTAT-Del.), **CCE, Coimbatore vs. L.G. Balakrishnan & Bros.** reported in 2009 (238) ELT 659 submitted that the expression "as such" in Rule 3(5) has to be harmoniously construed as is understood in Cummins India Limited case duly upheld by the Bombay High Court and considering the same the impugned order cannot be sustained and therefore be set aside.

5. On the other hand, learned DR placing reliance in the decision of the Larger Bench of the Tribunal in the matter of **Modernova Plastyles Pvt. Ltd., vs. Commissioner of C.Ex. Raigad** reported in 2008 (232) ELT 29 (Tri. LB) and of the Tribunal in **CCE, Goa vs. Betts India Pvt. Ltd.** reported in 2009 (24)) ELT 119 (Tr. Mumbai) submitted that the law at the relevant time comprised of Rule 3(5) of the said Rules which clearly required payment of the duty equivalent to the credit availed in respect of capital goods and, therefore, no fault can be found with the impugned order.

6. The point for consideration which arises in the matter are whether the goods, which were removed from the factory on 04.10.2006 would be liable to pay the duty equivalent to the amount of the credit which was availed initially when the goods were procured in the year 1998 or the same shall be after taking into consideration the wear and tear of the capital goods and bearing in mind the law as has been understood in terms of the decision in Cummins India Limited read with Raghav Alloys (P) Ltd. and Geeta Inds. (P) Ltd.,

7. Rule 3(5) of the CENVAT Credit Rules which was in force at the relevant time read thus:-

“(5) When inputs or capital goods, on which CENVAT credit has been taken, are removed as such from the factory, or premises of the provider of output service, the manufacturer of the final products or provider of output service, as the case may be, shall pay an amount equal to the credit availed in respect of such inputs or capital goods and such removal shall be made under the cover of an invoice referred to in rule 9:

Provided that such payment shall not be required to be made where any inputs are removed outside the premises of the provider of the output service for providing the output service:

Provided further that such payment shall not be required to be made when any capital goods are removed outside the premises of the provider of output service for providing the output service and the capital goods are brought back to the premises within 180 days, or such extended period and not exceeding 180 days as may be permitted by the jurisdictional Deputy Commissioner of Central Excise, or Assistant Commissioner of Central Excise, as the case may be, or their removal”.

8. Similar issue arose in Cummins India Limited wherein it was held thus:-

“2. The dispute in the present appeal relates to the issue as to whether the appellants were required to pay duty at the assessable value of the capital goods or they were required to reverse the

quantum of credit originally availed by them at the time of receipt of capital goods. Both the authorities below have held that since the capital goods have been cleared by the appellant, they are required to reverse the original quantum of credit availed by them in terms of provisions of Rule 3(4) of Cenvat Credit Rules, 2002.

3. After hearing both the sides I find that the said rules require reversal of credit in respect of the capital goods which are removed "as such". The plain and simple meaning of the expression "as such" would be that the capital goods are removed without putting them to use. Admittedly, in the present case capital goods stand used for a period of more than 7 to 8 years. As such, the interpretation given by the authorities below would lead to absurd results if an assessee is required to reverse the credit originally availed by them at the time of receipt of the capital goods, when the said capital goods are subsequently removed as old, damaged and unserviceable capital goods. This would defeat the very purpose of grant of facility of modvat credit in respect of capital goods and would not be in accordance with the legislative intent. The same view was held by the Tribunal in the case of *Madura Coats P. Ltd. vs. CCE, Tirunelveli*-2005 (190) ELT 450 (Tri.) = 2005 (70) RLT 730 (CESTAT – Ban.). As such I find no justification for the confirmation of differential amount. The impugned orders are accordingly set aside and appeal allowed with consequential relief to the appellants".

9. When the matter came up before the Tribunal in *Raghav Alloys (P) Ltd.*, involving similar issue, it was observed thus:-

"The question now arises as to whether during the period from 1.3.03 to 12.11.07 when the Rule 3(4) of CENVAT Credit Rules, 2002/ Rule 3(5) of CENVAT Credit Rules, 2004 provided for payment of an amount equal to the CENVAT credit taken when Cenvated inputs or capital goods are removed as such, whether the amount equal to the Cenvat credit originally taken will be required to be paid even if the capital goods are cleared after use for some time. Unlike inputs, which get consumed hundred percent when the same are taken up for use in or in relation to the manufacture of finished

products, capital goods get used up over a period of time. The capital goods lose their identity as capital goods only when after use over a period of time, the same have become unserviceable and fit to be scrapped and if they are cleared at that stage, the same cannot be said to have been cleared as such and in such a situation, the reversal of Cenvat credit taken will be required. But if the capital goods are removed after some use, at a stage in between the "unused" and "fully scrapped", they have not lost their identity as capital goods and since on removal of totally unused capital goods, full Cenvat credit is required to be reversed and on removal of unserviceable capital goods, removal as scrap, no Cenvat credit would be required to be reversed, in case of removal of used capital goods in between unused stage and scrap stage, when the capital goods, though used, have still retained their identity as capital goods, it would be logical to insist on reversal of Cenvat credit depending upon the extent of use, which would be more or less the duty chargeable on the depreciated value of the used capital goods. If the Department's view is accepted, it would lead to absurd results as even when the cenvated capital goods are cleared after long years of use at a small practice of their original value, still full Cenvat credit originally taken would be required to be reversed which would defeat the very purpose of grant of Cenvat credit facility in respect of capital goods. Tribunal in case of CCE, Ludhiana vs. Nahar Fibres reported in 2007 (220) ELT 855, while holding that the expression "as such" occurring in Rule 3(4), while deals with both "inputs or capital goods", is capable of being construed so as to refer only to the identity of such goods i.e. when these are capital goods, they remain such capital goods even at the time of their removal, has upheld the charging of an amount equal to duty on the depreciated value of used capital goods under Rule 3(4) at the time of their clearance. In case of Cummins India Ltd., vs. CCE (supra), it was held by the Tribunal that the capital goods received in 1996 and removed after 7 to 8 year's use in Jan '02 cannot be said to be the capital goods removed as such, and at the time of their clearance, the credit originally taken is not required to be reversed and payment of an amount equal to the duty on the sale price of such used capital goods would meet the requirement of the law. This judgment

has been upheld by Hon'ble Bombay High Court vide judgment reported in 2009 (234) ELT A120".

10. Dealing with the similar issue after taking note of various judgments in Geeta Inds. (P) Ltd., it was held thus:-

- 6.1 The "inputs" generally get used up hundred per cent and lose their identity when the same are used in or in relation to the manufacture of finished products and when unused inputs are cleared, as such, full Cenvat credit originally taken in respect of them would be required to be reversed. But, unlike inputs, the 'capital goods' get used up over a period of time. The capital goods lose their identity when the same have become totally unserviceable and unfit for further use and have to be scrapped. But between the unused stage and fully scrapped stage, the capital goods are still identifiable as capital goods. Tribunal in case of CCE, Ludhiana Vs. Nahar Fibres reported in 2008 (84) RLT 44 (CESTAT-Delhi) = 2007 (228) ELT 855, has held that the expression – "as such" in Rule 3(4) of the Cenvat Credit Rules, 2001/2002, which deals with both inputs or capital goods, is capable of being construed so as to refer only to the identity of such goods i.e. when these are capital goods, they remain such capital goods at the time of removal. A Larger Bench of the Tribunal in the case of Modernova Plastyles Pvt. Ltd. Vs. CCE, Raigad (supra) has held that the expression "as such" in Rule 4(5)(a) and Rule 3(4)(c) of the Cenvat Credit Rules, 2004 means without any addition, modification or alternation, it does not have any connection with the goods being used or unused and that the "capital goods removed as such" can be the unused as well as used conditions. It is only when the capital goods have become scrap, that their identity changes and they cease to be the capital goods. Since in respect of removal of unused capital goods, as such, full amount of credit taken is required to be reversed and in case of removal of fully scrapped capital goods removed as scrap, as per the provisions of Rule 3(5A), only an amount equal to the duty on the transaction value of the scrap is required to be paid, in the case of removal of capital goods after use, which are still identifiable as capital goods, though used, it would be logical to insist on proportionate credit depending upon the period of use i.e. the quantum of credit to be reversed should be determined by reducing from the credit originally taken at the time of receipt, an amount in proportion to the period of use and in this regard, it would be fair and reasonable to adopt the formula prescribed in old Rule 57S(2)(b) of Central Excise Rules, 1944 and 2nd provision to the Rule 3(5) of Cenvat Credit Rules, 2004, even though such provision was not there during the period of dispute. If the Department's view is accepted and literal meaning of Rule 3(4) of Cenvat Credit Rules, 2002/Rule 3(5) of Cenvat Credit Rules, 2004 is adopted, it would lead to absurd results, as even when the cenvated capital goods are cleared as used capital goods after, say, ten years of use, at a small fraction of their original

price, still full Cenvat credit originally taken would be required to be reversed, which would defeat the very purpose of grant of Cenvat credit facility in respect of capital goods.

6.2 As per "Maxwell on the Interpretation of Statutes", 12th edition by P.St. J. Langan, (page 228) –

"Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of apparent purpose of enactment, or to some inconvenience or absurdity, which can hardly have been intended, a construction may be put upon it which modifies the meaning of the words and even the structure of the sentence. This may be done by departing from the rules of grammar, by giving an unusual meaning to particular words, or by rejecting them altogether, on the ground that the legislature could not possibly have intended what its words signify; and that the modifications made are mere corrections of careless language and really give the true meaning. When the main object and intention of a statute are clear, it must not be reduced to a nullity by the draftsmen's unskilfulness or ignorance of the law, except in a case of necessity or the absolute intractability of the language used".

This passage has been quoted with approval by Hon'ble Supreme Court in the case of Tirath Singh Vs. Bachitta Singh reported in Air 1955 SC – 830. Thus when adhering to the ordinary meaning of the words used and to the grammatical construction, leads to any manifest absurdity or repugnance, the language of the statute can be modified to avoid such inconvenience.

6.3 Hon'ble Supreme Court in a recent case of CCE Vs. M/s.Gujarat Narmada Fertilizers Co. Ltd. reported in 2009 (94) RLT 247(SC) = 2009 TIOL 96-SC-CX has observed that "litigation on interpretation of CENVAT Credit Rules has risen on account of various conflicting decisions given by the various benches of CESTAT, the reason being that the Rules have not been properly drafted". The absence of provisions during the period from 1.3.03 to 12.11.07 in respect of quantum of Cenvat credit to be reversed if cenvated capital goods are cleared after use, as capital goods, (as a result of which if literal interpretation of Rule 3(4) of Cenvat Credit Rules, 2002/Rule 3(5) of Cenvat Credit Rules, 2004 is adopted, full cenvat credit originally taken would be required to be reversed, even if the capital goods are cleared after long period of use at a small fraction of their original price, while during the period prior to 1.3.03 and during the period from 13.11.2007 either there were separate and specific provisions for Cenvat credit reversal in the case of removal of capital goods after use, providing for reversal of proportionate credit depending upon the period of use, or the provision regarding removal of Cenvat credit were so worded that the same took care of the case when the capital goods are removed after being used), is obviously due to a drafting mistake having crept in, in course of drafting and redrafting of rules relating to Cenvat credit several times –substitution of Rule 57A to 57V of Central Excise Rules, 1944 by Rule 57AA to Rule 57AK of Central Excise Rules, 1944 w.e.f. 1.4.2000; thereafter

replacement w.e.f. 1.7.01 of Central Excise Rules, 1944 by Central Excise Rules, 2001 and Cenvat Credit Rules, 2001; replacement w.e.f. 1.3.02, of Cenvat Credit Rules, 2001, by Cenvat Credit Rules, 2002 and thereafter replacement w.e.f. 10.09.04, of Cenvat Credit Rules, 2002 by Cenvat Credit Rules, 2004 and several amendments in between. Had this not been a drafting mistake, the provisions identical to old Rule 57S(2)(c) and 57S(2b) of Central Excise Rules, 1944 would not have been introduced in Cenvat Credit Rules, 2004 w.e.f. 16.05.2005 and 13.11.2007 respectively. From this, it is clear that it was not the intention of the rule making authority to insist on reversal of full cenvat credit originally taken in respect of 'some capital goods, if the capital goods are cleared after being used for some time and as mentioned above, if in such a situation, reversal of cenvat credit originally taken is insisted, it would lead to absurd results and defeat the very purpose of extending cenvat credit facility to capital goods. Therefore, with regard to removal of cenvated capital goods as capital goods, but after being used, the words – “shall pay an amount equal to the credit availed in respect of such capital goods”, in Rule 3(5) of Cenvat Credit Rules, 2004/Rule 3(4) of Cenvat Credit Rules, 2002, must be interpreted as - “shall pay an amount equal to the credit availed in respect of such capital goods, reduced by an amount in proportion to the period of use”, as only by adopting this interpretation, Rule 3(5) of Cenvat Credit Rules, 2004/Rule 3(4) of Cenvat Credit Rules, 2002 would make sense in respect of removal of cenvated capital goods after being used. As discussed in para 6.1 above, for determining the abatement on account of period of use, the formula prescribed in old Rule 57S(2)(b) of Central Excise Rules, 1944 as well as in 2nd proviso to Rule 3 (5) of Cenvat Credit Rules (introduced w.e.f. 13.11.07) can be adopted.

7. In case of Cummins India Ltd. Vs. CCE, Pune-II reported in 2007 (219) ELT 911, capital goods received in 1996, in respect of which Cenvat Credit had been taken, were cleared after about 7 years' use in March, 2003 at much reduced value on payment of an amount equal to duty on the transaction value, instead of the Cenvat Credit originally taken, as demanded by the Department. The Tribunal in this case, set aside the demand for differential amount. The Tribunal's judgment, has been upheld by Hon'ble Bombay High Court vide judgment reported in 2009 (234) ELT.A-120.”

11. Similarly, in L.G. Balakrishnan & Bros. case, the Tribunal after taking note of the decision in Madura Coats Pvt. Ltd. case held thus:-

“3. I have carefully considered the facts of the case and the submissions made by the learned JDR. Rule 3(5) of CCR, 2004 prescribes that when inputs or capital goods, on which Cenvat credit has been taken, are removed as such from the factory, the manufacturer of the final products shall pay an amount equal to the credit availed in respect of such inputs or capital goods. I find that in

Madura Coats Pvt. Ltd., vs. CCE, Tirunelveli reported in 2005 (190) ELT 450 (Tri. Bang.) the Tribunal had interpreted the scope of this rule as regards capital goods. It was held that used capital goods were not capital goods as such. Paragraph 5 of the said decision is reproduced below:-

“We have gone through the records of the case very carefully. The Commissioner (Appeals) has given a clear finding that there is no provision to demand duty on removal of used Cenvated capital goods. He has also referred to the Board’s Circular dated the 1st July 2002. We want to make it clear that the above Circular is applicable only to capital goods removed as such and not to the used Cenvated capital goods. In other words, the appellant is not required to pay duty when the used machinery is sold. Hence, the appeal is allowed with consequential relief.

In the instant case the capital goods namely tools and dies were removed by the respondents after they had been used for some time. Rule 3(5) of CCR, 2004 did not apply to removals of worn-out capital goods. The respondents were not required to pay duty when the used capital goods were sold. In view of the above reading of the Rule 3(5) of CCR, 2004 the respondents are entitled to refund of the duty paid at the time of removal of the used tools/ dies. The impugned order is consistent with the statutory provisions and does not call for any interference. The appeal filed by the Revenue is dismissed”.

12. Likewise in Garden Plast Pvt. Ltd. case it was observed as under:-

“Apart from the above, we find that the Tribunal in the case of Madura Coats Pvt. Ltd. vs. CCE, Tirunelveli -2005 (190) ELT 450 (Tri. Bang.) held that when the Cenvatable capital goods are removed after use of the same, the credit originally availed is not required to be reversed inasmuch as, the same does not amount to removal of capital goods “as such”. To the same effect to another decision of the Tribunal in the case of Salona Cotspin Ltd., vs. CCE, Salem -2006 (201) ELT 592 (Tri. Chennai) wherein after taking note of the relevant provisions of Rule 3(4) of Cenvat Credit Rules, 2001/2002 held that

reversal of the credit is required only when the capital goods are removed from the factory "as such" and is not applicable to the removal of the used capital goods. Inasmuch as the law is settled on the issue, we set aside the impugned order and allow the appeal with consequential relief to the appellant. Stay petition also gets disposed of".

13. It is also to be noted that the decision in Cummins India Limited case was subjected to challenge before the Bombay High Court. However, the said challenge was dismissed observing thus:-

" We find that the view taken by the Tribunal is in consonance with law".

14. Apparently the Bombay High Court has confirmed the consistent view taken by the Tribunal in various judgments while dismissing the challenge to the order in Cummins India Limited.

15. It is true that the Larger Bench while dealing with the scope and ambit of the expression "as such" has observed that the said expression has to be interpreted as commonly understood, which is in the "original form" and "without any addition, alteration or modification" and that the said expression has no connection with the goods as being new or unused or used, however, it is to be noted that the Larger Bench was dealing with the said expression as used in Rule 4(5)(a) of the said rules and the said rule reads thus:-

"The CENVAT credit shall be allowed even if any inputs or capital goods as such or after being partially processed are sent to a job worker for further processing, testing, repair, reconditioning or any other purpose, and it is established from the records, challans or memos or any other document produced by the assessee taking the CENVAT credit that the goods are received back in the factory within one hundred and eighty days of their being sent to a job worker and if the inputs or the capital goods are not received back within one

hundred and eighty days, the manufacturer shall pay an amount equivalent to the CENVAT credit attributable to the inputs or capital goods by debiting the CENVAT credit or otherwise, but the manufacturer can take the CENVAT credit again when the inputs or capital goods are received back in his factory”

16. Plain reading of the said rule would disclose that it relates to the situation whereby the capital goods are removed either in the original form or after being partially processed to be sent to the job worker for further processing, testing, repair, reconditioning or for any other purpose. In comparison, the Rule 3(5) refers to the situation which may arise not necessarily in relation to any processing or acting upon the capital goods for any purpose but even for the purpose of discarding the capital goods. Being so, the expression “as such” in Rule 3(5) cannot be understood in the same way as is to be understood in relation to the use thereof in Rule 4(5)(a). Though, it is similar expression, the same has to be understood with reference to the context in which it has been used and that has been elaborately discussed by the Tribunal in Geeta Industries case, which do not require any further elaboration. Besides as already pointed out above decision in that regard in Cummins India Limited has been upheld in recent judgement by the Bombay High Court. The decision of the Bombay High Court is binding upon the Tribunal. The decision of the Larger Bench is not directly on the issue involved in the matter. Hence, the point for consideration has to be answered in favour of the appellants. Being so, the impugned order cannot be sustained and is liable to be set aside while confirming that the duty liability in relation to the goods removed by the appellants was correctly assessed by the appellants and was paid appropriately.

17. It is also to be noted that as has been already pointed out in Geeta Industries case, it was for a limited period that the relevant provision was found missing in the rule. The deficiency in that regard is already sought to be made good by necessary amendment to the rules by adding proviso to the said rule 3(5) which reads thus:-

“Provided also that any duty mentioned in sub-rule (1), other than if the capital goods on which the capital goods are taken or removed after being manufactured or provider of duty to be service shall pay an amount equal to the cenvat credit taken on the said capital goods reduced by 2.5% for each quarter of the year or part thereof from the date of taking cenvat credit”.

18. Undisputedly, the amount of duty paid is in consonance with the provisions of law comprised under the above quoted proviso.

19. The appeal accordingly stands disposed of in the above terms.

[Justice R.M.S. Khandeparkar]
President

[Rakesh Kumar]
Member [Technical]

/Pant/