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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

EXCISE APPEAL BRANCH

Appeal No. E/110 /2005 - EX[DB] Date 26/08/2010

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

To :
SIEL LTD. (PROPRIETOR: SIEL CHEMICAL COMPLEX)
VILLAGE KHADAULI/SARDARGARH, RAJPURA,
DISTT. PATIALA, PUNJAB

SIEL LTD. (PROPRIETOR: SIEL CHEMICAL COMPLEX) Appellant

Vs

C.C.E. CHANDIGARH Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 623/ **2010 EX[DB]** dated 11-8-10 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise 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.ASHOK SAGAR
   D-426, DEFENCE COLONY, N DELHI.

3 C.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
16.HON'BLE PRESIDENT

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Excise Appeal No. 110 of 2005

(Arising out of Order-in-Appeal No. 690/CE/CHD/2004 dated 18.10.2004 passed by the Commissioner of Central Excise, Chandigarh).

DATE OF HEARING : 11.08.2010
DATE OF DECISION : 11.08.2010

FOR APPROVAL AND SIGNATURE :

HON'BLE MR. JUSTICE R.M.S. KHANDEPARKAR, PRESIDENT
HON'BLE MR. 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 ?	
4.	Whether Order is to be circulated to the Departmental Authorities?	Y

M/s Siel Limited .... **Appellants**
(Rep by Sh. Ashok Sagar, Adv.)

VERSUS

CCE, Chandigarh .... **Respondent**
(Rep. by Sh. R.K. Verma, JDR)

CORAM : HON'BLE MR. JUSTICE RMS KHANDEPARKAR, PRESIDENT
HON'BLE MR. RAKESH KUMAR, MEMBER (TECHNICAL)

FINAL **ORAL ORDER NO.** 623/10-EX

PER SHRI JUSTICE R.M.S. KHANDEPARKAR :

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

2. The appellants challenge the order dated 18.10.2004 passed by the Commissioner (Appeals), Chandigarh, whereby the appeal filed by the Department against the order passed by the lower authority in relation to the issue pertaining to the penalty was allowed and the penalty of Rs. 50 lacs has been imposed against the appellants under Rule 173-Q and Rs. 5,000/- against the Manager of the Company.

3. The appellants were registered with the Central Excise Department for manufacture of excisable goods, namely, caustic soda, chlorine, fabrication of tanks etc. The appellants had procured various capital goods in respect of which the appellants were entitled to avail modvat credit relating to the duties paid thereon. However, the modvat credit could have been taken only after installation of those capital goods and not prior to that. The appellants, however, sought to avail the credit worth Rs. 1,76,98,411.74 in the month of March, 1998. In the course of inspection of the premises and on scrutiny of the records submitted by the appellants, the fact that the said credit was sought to be availed by the appellants even prior to the installation of the capital goods was noticed by the preventive staff of the Excise Department and was brought to the notice of the appellants. Thereupon, the appellants *suo moto* reversed the said credit with clear intention to avail the said credit at the time of commencement of production after

installation of the said capital goods. The said reversal of credit was made on 14.07.1998. Subsequently, on completion of installation of the capital goods, the appellants availed the said credit.

4. In the above background, the lower authority had held that, taking of the modvat credit prior to the commissioning of the plant was irregularity on the part of the appellants and they having *suo moto* reversed the credit with the intention to avail the same on completion of installation of capital goods and actually having accordingly availed the same, there was no case warranting for forfeiture of the modvat credit and hence no penalty was imposed. Being aggrieved, the matter was carried in appeal by the Department insisting for imposition of penalty on the ground that such an action is warranted under Section 173-Q(1)(bb) of the Central Excise Rules, 1944. Accepting the contention on behalf of the Department, the Commissioner (Appeals) while allowing the appeal imposed the penalty of Rs. 50 lacs against the appellants and upheld the penalty imposed against the Manager of the appellant Company.

5. On hearing the learned advocate for the appellants and learned DR for the respondent, it is seen that, undisputedly, the provisions of law comprised under Rule 57Q(7) provide that, the credit of the specified duty on capital goods other than those capital goods covered under S.Nos. 5,7,10,11 and 12 of column (2) of the Table below sub-rule (1) of the said Rule and received in the factory on or after 1st day of January, 1996 shall not be taken on a date prior to the date on which such capital goods are installed or, as the case may be, used for manufacture of excisable goods, in the factory of the

manufacturer as certified by such manufacturer or a person designated by him for this purpose.

6. Rule 173Q(1)(bb) provides that, subject to the provisions contained in Section 11-AC of the Central Excise Act, 1944 and sub-rule (4) of Rule 57-I and sub-rule (6) of Rule 57-U, if the manufacturer, producer, registered person of a warehouse or a registered dealer takes credit of duty or money in respect of inputs or capital goods for being used in the manufacture of final products or capital goods for use in the factory of manufacturer of final product, as the case may be, wrongly...................all such goods shall be liable to confiscation and the manufacturer, producer, registered person of a warehouse or a registered dealer, as the case may be, shall be liable to a penalty not exceeding three times the value of the excisable goods, in respect of which any contravention of the nature referred to in clause (a) or clause (b) or clause (bb) or clause (bbb) or clause (c) or clause (d) has been committed, or five thousand rupees, whichever is greater.

7. Undisputedly, in the matter in hand, the order passed by the adjudicating authority discloses a clear finding to the effect that taking of modvat credit prior to commissioning of the plant was irregular and hence the appellants had *suo moto* reversed the same. The findings arrived at by the Commissioner (Appeals) also disclose that, within fortnight from the day it was brought to the notice of the appellants about the said irregularity, the appellants *suo moto* had reversed the credit.

8. It is also not in dispute that the appellants were entitled to avail the credit in question. The only irregularity which was committed by the appellants was that, the said credit was shown to have been availed in the records prior to the installation of the capital goods. At the same time, it is neither in dispute nor can be disputed in the facts and circumstances of the case that there was no occasion for the appellants to utilize the credit, so availed, and, in fact, they had not utilized the same till they availed the said credit lawfully after installation of the capital goods.

9. The records, therefore, disclose a clear finding by the adjudicating authority in favour of the appellants that taking of credit was a mere irregularity. It is pertinent to note that the Commissioner (Appeals) has not disturbed the said finding. Added to that, the Commissioner (Appeals) has observed that, the credit was reversed within 15 days from the date of intimation in that regard by the Department to the appellants. It is true that the Commissioner (Appeals) has not stated so in so many words. However, the observations that the preventive staff visited the unit from 25th to 27th June, 1998 and on scrutiny of the records found that the credit on the capital goods during the month of March, 1998 to the tune of Rs. 1,77,79,456/- was shown to have been availed in the statutory records was brought to the notice of the appellants and the authorized signatory of the appellants thereupon admitted the lapse and thereafter *suo moto* reversed the credit on 14th July, 1998.

10. All the above facts which were on record clearly disclose total absence of mal-intention or intention to avail and utilize the credit

in contravention of the provisions of law. In the peculiar facts and circumstances of the case, therefore, we are of the considered opinion that the provisions regarding requirement of imposition of penalty are not attracted and hence the authorities below erred in imposing the penalty.

11. In the result, therefore, the appeal succeeds. The penalty imposed in the matter against the appellants as well as the authorized signatory is hereby quashed. The appeal stands disposed of accordingly.

(JUSTICE R.M.S. KHANDEPARKAR)
PRESIDENT

(RAKESH KUMAR)
MEMBER (TECHNICAL)

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