TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

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/2092/2008 – SM[BR] Date 11/11/2010

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

To :
M/S B.S. PUMP.,
BASAI ROAD, GURGAON.

M/S B.S. PUMP., Appellant

Vs

C.C.E. JAIPUR I Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1213 / 2010-SM[BR] dated 28.10.2010 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. JAIPUR I
   N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.
2. Adv. / Consult
   MR.BIPIN GARG
   B-1/1289,A-VASANT KUNJ, NEW 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 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-IV

Date of hearing/decision: **28.10.2010**

Excise Appeal No. 2092 of 2008-SM

[Arising out of order-in-Appeal No. 108-109/KKG/GGN/2008 dated 26.5.2008 passed by the Commissioner of Central Excise (Appeals), Delhi-III]

For approval and signature:

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982.	No
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?	No
4	Whether Order is to be circulated to the Departmental authorities?	Yes

M/s B.S. Pump — Appellant

Vs.

CCE, Jaipur-I — Respondent

Appearance:

Appeared for the Appellant - Shri Bipin Garg, Advocate
Appeared for the Respondent - Shri K.P. Singh, SDR

Coram: Hon'ble Mrs. Archana Wadhwa, Member (Judicial)

Final Order No. 1213/2010 SM (Br)

Per Archana Wadhwa :

As per the facts on record, the appellant is engaged in the manufacture of submersible pumps. Prior to 1.3.03, they were availing of duty exemption under Notification No. 10/02-CE dated 1.3.02 which prescribed a concessional rate of 4% of adv. subject to condition that no input duty/capital goods Cenvat credit has been taken. Accordingly, during period prior to 1.3.03, the appellant while availing of concessional rate of duty under Notification No. 10/02-CE were not taking any input – capital goods/Cenvat credit. With effect from 1.3.03, the old Notification No. 10/02-CE was rescinded and new Notification No. 10/03-CE was issued which prescribed effective rate of duty of 8% but without condition of not taking Cenvat credit. Accordigly, when w.e.f. 1.3.03, the appellant started availing of the exemption under Notification No. 10/03-CE, they took Cenvat credit of Rs. 1,13,898/- in respect of the inputs lying in his stock inputs in process and inputs contained in the stock of finished goods lying in the factory as on 1.3.03. The Department was of the view that they were not eligible for this Cenvat credit during the transitional period and accordingly, the Assistant Commissioner vide order-in-original dated 19.10.07 confirmed the Cenvat credit demand of Rs.1,13,898/- along with interest and imposed penalty of Rs.10,000/-. Against the Assistant Commissioner's order, the appellant filed an appeal before the Commissioner (Appeal) and the Revenue also filed a review appeal before the Commissioner (Appeal) for enhancement of the penalty to amount equal to the allegedly wrongly taken Cenvat credit. The Commissioner (Appeal) vide the impugned order while upholding the Cenvat credit demand of Rs.1,13,898/- also enhanced the penalty from Rs.10,000/- to Rs.1,13,898/-. The said order of Commissioner (Appeals) is impugned before Tribunal.

2. I have heard Shri Bipin Garg, ld. Advocate appearing for the appellant and Shri K.P. Singh, ld. DR for the Revenue.

3. After hearing both the sides, I find that issue is no more res integra and stands settled by the Tribunal's decision in the case of **G.E. Lighting India (P) Ltd. Vs. Commissioner of Central Excise, Ahmedabad** reported in 2007 (216) ELT 402 (Tri.- Ahmd.). It was held that when manufacturer availing of Notification No. 10/02-CE dated 1.3.02, switched over to Notification No. 10/03-CE dated 1.3.03 w.e.f. 1.3.03, he would be eligible to Cenvat credit in respect of the inputs lying in stock either as such/or in process/or attributable to the finished goods lying in the factory as on 1.3.03 and removed thereafter. Ld. DR has not been able to show any contra decision. As I find no reasons to take a different view than the earlier decision in the case of **G.E. Lighting India (P) Ltd.,** by following the same, I set aside the impugned order and allow the appeal with consequential relief to the appellant.

(Pronounced in Court)

(ARCHANA WADHWA)
MEMBER (JUDICIAL)

RM