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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/2293/2008 – SM[BR] Date 16/11/2010

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

To :
M/S SAMANIA IMPEX PVT. LTD.
RAJEGAON, DISTT: BALAGHAT (M.P.)

M/S SAMANIA IMPEX PVT. LTD. Appellant

Vs

C.C.E BHOPAL Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1251 / 2010-SM[BR] dated 19.10.2010 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 BHOPAL
   HOSHANGABAD ROAD, 48, ADMINISTRATIVE AREA, AREA HILLS, BHOPAL (M.P.) 462011
2. Adv. / Consult
   MRS.RENU GUPTA,ADVOCATE
   1058, SECTOR-3, R.K.PURAM, N DELHI-22

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)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. III

Excise Appeal No. 2293 of 2008-SM(BR)

[Arising out of Order-in-Appeal No. 100/BPL/2008 dated 15.7.2008 passed by the Commissioner (Appeals) Customs & Central Excise, Bhopal]

For approval and signature:

Hon'ble Mr. Ashok Jindal, Member (Judicial)

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1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? :

2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? :

3. Whether Their Lordships wish to see the fair copy of the Order? :

4. Whether Order is to be circulated to the Departmental authorities? :

M/s. Samania Impex (P) Ltd. — Appellants

Vs.

Commissioner of Central Excise Bhopal — Respondent

Appearance: Ms. Renu Gupta, Advocate for the Appellants
Shri Anil Khanna, SDR for the Respondent

Date of Hearing/decision : 19.10.2010

Final

ORAL ORDER NO. 1251/2010 SM(BR)

Per Ashok Jindal:

The appellants have filed this appeal against the order directing them to reverse the Cenvat credit allowed in their Cenvat credit account while opting the exemption under SSI scheme. The facts of the case are that the appellants are engaged in the manufacturing activity and opted for availing exemption of Cenvat Credit from 1.4.06 under Notification No. 8/03-CE dated 1.3.2003. It was alleged against the appellants that the appellants have to reverse the amounts equivalent to Cenvat credit involved in the inputs lying in stock or in process or contained in the final products lying in stock under Rule 11(2) of the Central Excise Rules, 2004 when such option for exemption was exercised. Both the lower authorities confirmed the demand along with interest and penalties. Aggrieved from such orders appellants are in appeal before this Tribunal.

2. Ms. Renu Gupta, learned Advocate for the appellants submitted that the issue involved in this case has been decided by the Larger Bench of this Tribunal in the case of HMT vs. CCE, Panchkula reported in [2008 (232) ELT 217 (Tri-LB)] holding that no requirement to reverse credit on final products becoming exempt subsequently and such credit not recoverable. The Hon'ble Larger Bench has held that the appellants had correctly took the credit and utilised when the final product is dutiable and there is no requirement to reverse the credit when final products become exempted and such credit cannot be recovered under Rule 12 of the Cenvat Credit Rules, 2002. She fairly submitted that in the case of M/s. Ranbaxy Laboratories Ltd. vide Final Order No. 218/2010 Ex dated 30.4.2010, this Tribunal has

held that the assessee is required to reverse the credit lying in their Cenvat credit account while opting for an exemption under particular notification. She also submitted that the decision of this Tribunal has been stayed by the Hon'ble High Court of Himachal Pradesh in Central Excise Appeal No. 8/10 on 26.8.2010. Accordingly, the impugned order be set aside.

3. On the other hand, the learned DR submitted that the facts of the case of HMT are not similar to this case. Infact, in the case of HMT, the Tribunal has decided that when the final products become exempted in that case, there was no requirement to reverse the credit from their Cenvat account.

4. Heard both sides.

5. On careful examination of the submissions made by both the sides, I find that the issue before me to decide is that whether the assessee is liable to reverse the amount lying in their Cenvat credit account while opting for exemption under any particular notification or not. The issue in the case of HMT (supra) has dealt with the issue in detail and thereafter the Tribunal has arrived at the decision that when the credit has been availed by the assessee, for the final products which becomes subsequently exempt, in that case, the assessee need not be required to reverse the credit from Cenvat credit account. With regard to the decision of M/s. Ranbaxy Lab. Ltd., the same has been stayed by the Hon'ble High Court of Himachal Pradesh. Hence, this decision is applicable to these matters. Following the ratio laid down by the Larger Bench of this Tribunal., I hold that in the facts and circumstances of the case, the appellants are not required to reverse the credit lying in their

Cenvat credit account while opting for exemption under Notification No. 8/03. With these observations, the impugned order is set aside. Appeal is allowed.

(Ashok Jindal)
Member(Judicial)

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