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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/2373/2008 – SM[BR] Date 01/12/2010

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

To :
M/S DCM ENGINEERING LIMITED,

ASRON, DISTT.NAWAN SHAHAR, PUNJAB

M/S DCM ENGINEERING LIMITED, Appellant

Vs

C.C.E. JALLANDHAR(HQ. AT CHANDIGARH) Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1319 / 2010-SM[BR] dated 15.11.2010 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. JALLANDHAR(HQ. AT CHANDIGARH)

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

2. Adv. / Consult

   MR.S.C. KAMRA & CO.

   B-2/210(BASEMENT), SAFDARJUNG ENCLAVE, NEW DELHI- 110029

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. 2373 of 2008-SM(BR)

[Arising out of Order-in-Appeal No. 368/ CE/ Appl/ Jal/ 2008 dated 26.8.2008 passed by the Commissioner of Central Excise (Appeals), Chandigarh.]

For approval and signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)

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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? : Yes
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : Yes
3. Whether Their Lordships wish to see the fair copy of the Order? : Seen
4. Whether Order is to be circulated to the Departmental authorities? : Yes

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M/s. DCM Engineering Ltd. — Appellants

Vs.

Commissioner of Central Excise
Jalandhar — Respondent

Appearance: Shri S.C. Kamra, Advocate for the Appellants
Shri Anil Khanna, SDR for the Respondent

Date of Hearing/decision : 15.11.2010

Final

ORAL ORDER NO. 1319/2010 SM(BR)

Per M. Veeraiyan:

This is an appeal against the order of the Commissioner (Appeals) No. 368/ CE/ Appl/ Jal/ 2008 dated 26.8.2008 by which order of the original authority disallowing Cenvat credit of Rs.1,94,226/- on slag pan was upheld along with equal amount of penalty.

2. Heard both sides.

3. The relevant facts, in brief, are that the appellants are manufacturers of iron casting using scrap as inputs. While melting the scrap to high temperature of 1500^{0}C, the slag is generated which floats on the surface of the molten metal and 'slag pans' are used to collect such slag. Since the slag pans are used for removing slag in high temperature, after use for sometime the slag pans themselves get melted and become part of the molten metal which are made into casting which is their final product. The appellants have treated such slag pan which becomes part of casting in due course as inputs and taken credit. Show cause notice was issued alleging that the said slag pan cannot be treated as inputs but should be treated as capital goods as inputs and therefore, the credit should have been taken in two instalments instead of one. Accordingly, the original authority ordered recovery of 50% of the credit and imposed equal amount as penalty. The order of the original authority stands upheld by the Commissioner (Appeals).

4. Learned Advocate for the appellants submits that the impugned items having been used fully and becoming part of the final products cannot be treated as capital goods and the credit taken as inputs is justified. The Department while holding that the goods as capital goods have not allowed

the balance of credit as capital goods during the next financial year. At any rate, it was a dispute involving legal interpretation and no intention to evade any duty on the part of appellant and therefore, no penalty is warranted. He relies on the decision of the Hon'ble Supreme Court in the case of Eastern Electro Chemical Industries vs. Collector of C. Ex. Indore reported in 2005 (181) ELT 295 (SC) wherein MS casings which were used in the factory of production of calcium carbide which got melted and got mixed up with the other molten raw materials was treated as inputs and credit extended. On the same analogy, he submits that that slag pan which got melted and become part of the final product should be allowed as scrap as inputs.

5. Learned SDR reiterates the findings and reasoning of the Commissioner (Appeals).

6. I have carefully considered the submissions from both sides and perused the records. It is not disputed that the slag pans made of MS sheets / plates are utilised for operations at very high temperature and that they got melted and became part of castings which are the final products manufactured by the appellants. I hold that the decision of Hon'ble Supreme Court in the case of Eastern Electro Chemical Industries cited supra is squarely applicable to the facts of the present case. Under these

circumstances, it would be appropriate to treat the slag pans which got melted and become part of the final products in due course, as inputs.

7. The impugned order is therefore, set aside and appeal allowed with consequential relief as per law.

(M. Veeraiyan)
Member(Technical)

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