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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/3042/2009 – SM[BR] **Date 07/09/2011**

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

To :
C.C.E. JAIPUR I
N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME,
JAIPUR 302005.

C.C.E. JAIPUR I Appellant

Vs

M/S VIDEOCON INDUSTRIES LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No. 566 / 2011-SM[BR]** dated 18.8.2011 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
M/S VIDEOCON INDUSTRIES LTD.
SP-1, VIGYAN NAGAR, RIICO
INDUSTRIAL AREA,
SHAHJAHANPUR, THE. BEHROR,
DISTRICT: ALWAR (RAJASTHAN)
2. Adv. / Consult
NONE:------------------
3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi -
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. IV
Excise Appeal No. 3042 of 2009 (SM)

[Arising out of the Order-in-Appeal No. 288 (DK)-CE/JPR-I/ 2009 dated 14/26-10-2009 passed by The Commissioner (Appeals-I), Central Excise, Jaipur.]

For Approval and signature :
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? :

2. Whether it would 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 Department Authorities? :

CCE, Jaipur – I Appellant

Versus

M/s Videocon Industries Ltd. Respondent

Appearance

Shri Anil Khanna, Authorized Representative (DR) – for the appellant.

None – for the respondent.

CORAM : **Hon'ble Shri Rakesh Kumar, Member (Technical)**

DATE OF HEARING : 18/08/2011.

Final Order No. 566/2011 SM (BR) Dated : __________

Per. Rakesh Kumar :-

The respondents are manufacturers of refrigerators chargeable to Central Excise duty. They avail Cenvat credit of duty paid on inputs used in or in relation to manufacture of their finished products. During the period from 20/4/06 to 29/7/2006 to 20/4/2007 they availed Cenvat credit amounting to Rs. 2,15,737/- on the basis of certain invoices twice, which on being pointed out by the audit was reversed. Subsequently show cause notice issued to them for confirmation of Cenvat credit demand and also for demand of interest on wrongly taken credit and imposition of penalty. The Assistant Commissioner vide order-in-original No. 51/2008 dated 7/10/2008, beside confirming Cenvat credit demand of Rs. 2,15,737/- also demanded interest on the same under Rule 14 of Cenvat Credit Rules, 2004 readwith Section 11AB of Central Excise Act and imposed penalty on them under Rule

15 of Cenvat Credit Rules. On appeal being filed before the Commissioner (Appeals) by the respondent, the Commissioner (Appeals) by the impugned order-in-appeal No. 288 (DK) CE/JPR-I/2009 dated 14/10/2009, while upholding the Cenvat credit demand, set aside the interest and penalty. Against this portion of the order, the Commissioner (Appeals), the present appeal has been filed by the Revenue.

2. Though a notice for hearing had been sent to the respondent well in time, today when this matter was called, none representing the respondent appeared. There is also no letter from them seeking adjournment. On earlier occasion also, when this matter had been listed for hearing on 25/5/11, nobody representing the respondent had appeared. In view of this, under Rule 21 of the CESTAT Procedure Rule, 1982, this matter, so far as the respondent is concerned, is decided ex-parte.

2.1 Heard Shri Anil Khanna, the learned Departmental Representative who pleaded that so far as the question of interest for the period of wrong availment of Cenvat credit is concerned, the issue stands decided in favour of the respondent by the judgment of Hon'ble Supreme Case in the case of **Union of India vs. Ind-Swift Laboratories Ltd.** reported in **2011 (265) E.L.T. 3 (S.C.)**, that since this is a case of wrong availment of Cenvat credit, penalty under Rule 15 (1) would also be attracted, as from the wordings of Rule 15 (1) of Cenvat Credit Rules, 2004 it is clear that the penalty is attracted for wrong availment of Cenvat credit and for this purpose, no mens-rea is required to be proved. He, therefore, pleaded that the impugned order setting aside the interest and penalty is not correct.

3. I have carefully considered the submissions of the learned DR and perused the records.

4. In this case, there is no dispute about the wrong availment of Cenvat credit, which had been availed on the basis of the same invoices twice and on being pointed out, the excess credit taken had also reversed. The dispute is only as to whether the respondent are liable to pay interest for the period, they had availed the wrong Cenvat credit and also whether they are liable for penalty under Rule 15 (1) of Cenvat Credit Rules, 2004. So far as the question of interest

for the period of wrong availment of the Cenvat credit, the same stands decided in favour of the department by the judgment of Hon'ble Supreme Court in the case of **UOI vs. Ind-Swift Laboratories Ltd.** (supra), and, hence, the Commissioner (Appeals)'s order setting aside the interest is not correct and the same is liable to be set aside.

5. As regards the imposition of penalty, for imposition of penalty for wrong availment under Rule 15 (1) of Cenvat Credit Rules, no mens-rea is required to be proved and penalty is attracted whenever Cenvat credit is availed wrongly. It is only for imposition of penalty equal to the wrongly availed Cenvat credit under the provisions of sub-rule (2) of Rule 15 readwith Section 11AC of the Central Excise Act, 1944, that the mens-rea is required to be proved. In view of this, the impugned order setting aside the penalty on the respondent is not correct and is liable to be set aside. However, looking to the circumstances of this case, the imposition of penalty equal to the Cenvat credit demand would not be justified and the same has to be reduced.

6. In view of the above discussion, the Commissioner (Appeals)'s order setting aside the interest and penalty is set aside and in this regard, the order passed by the original Adjudicating Authority is restored. However, looking to the circumstances of this case, **penalty under Rule 15 (1) of Cenvat Credit Rules, 2004 is reduced to Rs. 20,000/-.** Revenue's appeal stands disposed of, as above.

(Dictated and pronounced in open court.)

(Rakesh Kumar)
Member (Technical)

PK

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. I

DATE OF HEARING : 25/05/2011.
DATE OF DECISION : 25/05/2011.

Excise Appeal No. 3042 of 2009 (SM)

CCE, Jaipur – I — Appellants

Versus

M/s Videocon Industries Ltd. — Respondent

Appearance

Mrs. Rimjhim Prasad, Authorized Representative (SDR) – for the Appellants.

None – for the Respondent.

CORAM : **Hon'ble Shri Justice R.M.S. Khandeparkar, President**

Order No. ________________ Dated : ______________

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

Issue fresh notice to the assessee returnable on **18th of August 2011**.

(Justice R.M.S. Khandeparkar)
President

PK