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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/337 /2009 – SM[BR]** Date **03/08/2011**

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

To :
M/S NEEL METAL PRODUCTS LTD.
MODHAMMADPUR JHARSA SECTOR-36, GURGAON.

M/S NEEL METAL PRODUCTS LTD. Appellant
Vs
C.C.E. DELHI III Respondent

I am directed to transmit herewith a certified copy of **Final order No. 451 / 2011-SM[BR]** dated 28.7.2011 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. DELHI III
UDYOG MINAR, UDYOG VIHAR,
VANIJYA NIKUNJ, PHASE V,
GURGAON - 122016 (HARYANA)

2. Adv. / Consult
MR.S. K. PAHWA
MARWAH & PAHWA, 45, ARADHANA SECTOR 13, R. K. PURAM, NEW DELHI-110066.

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)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.

SINGLE MEMBER BENCH
Court-IV
Excise Appeal No.337 of 2009-SM

Date of Hearing/Decision: 28.07.2010

(Arsing out of Order-in-Appeal No.272/ANS/GGN/2008 dated 04.12.08 passed by the CCE(A), Delhi-III, Gurgaon)

For approval and signature:

Hon'ble Mr.Sahab Singh, 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?	No
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

Neel Metal Products Ltd. Appellant

Vs.

CCE,Delhi-III Respondent

Present for the Appellant: Shri S.K.Pahwa, Advocate
Present for the Respondent: Shri S.k.Panda, JCDR

Coram: Hon'ble Mr.Sahab Singh, Member (Technical)

Final **ORDER NO.** 451/2011 SM (Br)

PER: SAHAB SINGH

This is an appeal filed by the appellants against the Order-in-Appeal No.272/ANS/GGN/2008 dated 04.12.08 passed by the Commissioner of Central Excise, (Appeals), Delhi-III, Gurgaon.

2. The brief facts of the case are that the appellants are the manufacturers of C.R.Coil, C.R.Sheet, S.S.Sheets, Auto Parts and Motor Vehicle Parts and availing the credit facility in respect of duty paid on inputs and capital goods. During the course of audit of the records, it was ~~found~~ noticed by the audit that they had purchased the goods in the year 2001 and they had availed the credit of Rs.1,60,611/-. In the year 2006, the appellants had sold those goods and discharged the duty liability of Rs.57,446/- based on its depreciated value. The department took the view that the appellants were required to reverse the credit availed during the year 2001 in respect of the capital goods cleared 'as such' equal to the amount of credit at the time of receipt of the goods under Rule 3(5) of Cenvat Credit Rules, 2004. Accordingly a show cause notice was issued to the appellants which was confirmed by the original authority against which the appellants filed the appeal before the Commissioner (Appeals) who has upheld the order passed by the lower authorities.

3. Learned Advocate appearing for the appellants submitted that the only issue to be decided in this case is whether the entire credit availed at the time of receipt of the goods in the year 2001 is to be reversed by the assessee or at the time of sale of the goods in the year 2006 ~~of~~ duty to be paid at the depreciated value ~~paid by them~~. He submitted that Rule (3(5) was amended ~~and~~ in which a proviso was inserted by virtue of Notification No.39/2007-CE (NT) dt.14.11.2007 ~~in~~ by which the duty was allowed to be paid at the depreciated value. Though this case pertains to the period prior to amendment i.e.14.11.2007, their case is squarely covered by the

decision of the Tribunal in the case of Greenply Industries Ltd. vs. CCE, Jaipur reported in 2010 (259) ELT 103.

4. On the other hand, learned JCDR appearing for the Revenue argued that in view of the larger bench decision of this Tribunal in the case of Modernova Plastyles Pvt.Ltd. vs. CCE reported in 2008 (232) ELT 29, the entire credit availed by the appellants at the time of receipt of the goods is required to be reversed. He further relied on the decision of the Single Member of this Tribunal in the case of CCE, Goa vs. Betts India Pvt.Ltd. reported in 2009 (240) ELT 119 wherein it was held by the Tribunal that the entire credit availed by the assessee requires to be reversed under the then existing Rules

5. Heard both sides and perused the records.

6. After hearing both sides, the only issue to be decided in this case is whether the entire credit availed by the appellants at the time of initial receipt of the goods in 2001 is required to be reversed or duty discharged by the assessee at the depreciated value in the year 2006 can be accepted without recovering any differential amount from them, ~~under~~ Rule 3(5) of Cenvat Credit Rules, 2004 as it stood at the time of removal of the goods provided that the capital goods on which the credit taken are removed 'as such', the manufacturer of final product shall pay an amount equal to the credit availed in respect of such capital goods. The department's contention is that since the goods have been removed as such in the year 2006, the entire credit is required to be reversed by them as the period of clearance of the goods is prior to amendment of Rule 3(5) ibid. Learned JCDR is relying on the

decision of the Larger Bench of the Tribunal in the case of Modernova Plastyles Pvt.Ltd. vs. CCE (supra) also referred ~~earlier~~ in case of CCE, Goa vs. Betts India Pvt.Ltd. I find that the Tribunal in the case of Greenply Industries Ltd. vs. CCE, Jaipur (supra) ~~is~~ has distinguished the cases of Modernova Plastyles Pvt.Ltd. vs. CCE and CCE, Goa vs. Betts India Pvt.Ltd. and para 16 sand 17 of the order are reproduced below:-

"16. Plain reading of the said rule would disclose that it relates to the situation whereby the capital goods are removed either in the original form or after being partially processed to be sent to the job worker for further processing, testing, repair, reconditioning or for any other purpose. In comparison, the Rule 3(5) refers to the situation which may arise not necessarily in relation to any processing or acting upon the capital goods for any purpose but even for the purpose of discarding the capital goods. Being so, the expression "as such" in Rule 3(5) cannot be understood in the same way as is to be understood in relation to the use thereof in Rule 4(5)(a). Though, it is similar expression, the same has to be understood with reference to the context in which it has been used and that has been elaborately discussed by the Tribunal in Geeta Industries case, which do not require any further elaboration. Besides as already pointed out above decision in that regard in Cummins India Limited has been upheld in recent judgement by the Bombay High Court. The decision of the Bombay High Court is binding upon the Tribunal. The decision of the Larger Bench is not directly on the issue involved in the matter. Hence, the point for consideration has to be answered in favour of the appellants. Being so, the impugned order cannot be sustained and is liable to be set aside while confirming that the duty liability in relation to the goods removed by the appellants was correctly assessed by the appellants and was paid appropriately.

***17.** It is also to be noted that as has been already pointed out in Geeta Industries case, it was for a limited period that the relevant* *provision was found missing in the rule. The deficiency in that regard is already sought to be made good by necessary amendment to the rules by adding proviso to the said Rule 3(5) which reads thus :-*

> *"Provided also that any duty mentioned in sub-rule (1), other than if the capital goods on which the capital goods are taken or removed after being manufactured or provider of duty to be service shall pay an amount equal to the Cenvat credit taken on the said capital goods reduced by 2.5% for each quarter of the year or part thereof from the date of taking Cenvat credit".*

7. In the case of Greenply Industries Ltd., the department has demanded the duty amount in the similar set of circumstances as originally M/s.Greenply Industries Ltd. has availed the credit of Rs.11,07,117/- and while clearing the goods duty was paid of Rs.6,88,000/-. The department had taken the view that under Rule 3(5) of Cenvat Credit Rules, the entire credit was required to be reversed. This is the issue in the present case. As per decision of the Tribunal in the case of Greenply Industries Ltd., the expression 'as such' used in Rule 3(5) cannot be understood in the same way as is to be understood in relation to use in Rule 4(5) of Cenvat Credit Rules. Since, the issue is covered by the decision of the Tribunal in the case of Greenply Industries Ltd., the appeal is allowed.

(The operative part of this already pronounced in the court)

(SAHAB SINGH)
MEMBER (TECHNICAL)

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