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

EXCISE APPEAL BRANCH

Appeal No. E/1247/2006 - EX[DB] Date **06/07/2011**

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 CAPITAL IMPEX PVT. LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.497/ 2011 EX[DB]** dated 29-6-11 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
M/S CAPITAL IMPEX PVT. LTD.
G-1071/B, RIICO INDUSTRIAL
AREA, PHASE-III, BHIWADI
(RAJASTHAN)

2. Adv. / Consult
MR.L.P. ASTHANA & MS REENA KHAIR
R-163, SECOND FLOOR, GREATER KAILASH-1, NEW DELHI - 110 048.

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise, I.P. Estate, New Delhi
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 - 110005
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
14. HON'BLE PRESIDENT.

Assistant Registrar
(Excise Appeal Branch)

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

Excise Appeal No. 1247/2006- Ex(BR)

[Arising out of Order-in-Appeal No. 475(MPM)/CE/JPR-I/2005 dated 26.12.2005 passed by the Commissioner of Central Excise, (Appeals I), Jaipur]

For approval and signature:

Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri M. Veeraiyan, 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? : Yes
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? : Seen
4. Whether Order is to be circulated to the Departmental authorities? : No

---

Commissioner of Central Excise. Jaipur I — Appellants

Vs.

M/s. Capital Impex Pvt. Ltd. — Respondent

Appearance:

Shri S. K. Panda, Jt.CDR for the Appellants
Shri L. P. Asthana, Advocate for the Respondent

CORAM:

Hon'ble Mr. Justice R.M.S. Khandeparkar, President
Hon'ble Mr. M. Veeraiyan, Member (Technical)

Date of Hearing/decision : 29.6.2011

FINAL **ORAL ORDER NO. 497/2011 – EX**

Per M. Veeraiyan (for the Bench):

This is an appeal by the department against the order of the Commissioner (Appeals) No. 475(MPM)/CE/JPR-I/2005 dated 26.12.05 by which order of the original authority rejecting refund claim of Rs.37,45,820/- by the respondent was set aside and appeal allowed.

2. Heard both sides.

3. The respondents manufactured SS utensils falling under Chapter Heading No. 7323.90 using captively SS Patties and Pattas manufactured by them out of duty paid SS flats procured by them from the market. They did not avail the benefit of notification No. 10/03 CE dated 1.3.2003. They exported the SS utensils and claimed refund of Cenvat credit accumulated in view of export made of the SS utensils. The refund claim was rejected by the original authority holding that if the respondents have not availed exemption on SS Patties and SS pattas captively consumed by them, they could have utilised the credit and there would not have been any accumulation of credit. Commissioner (Appeals) has set aside the order of the original authority.

4. Learned Jt. CDR reiterated the grounds of appeal. He submitted that in the final order No. 884/09 dated 7.10.09 in E/Appeal No. 81/2005 relating to the same respondent, there is no discussion regarding eligibility of exemption notification 67/1995 dated 16.3.95. Therefore, he wanted the Tribunal to consider the said issue. However, he fairly conceded that the facts of the case in Appeal No. 81/2005 are same as facts of the present case.

5. Learned advocate for the respondent submitted that the issue involved in the present case is identical to the issue decided in Appeal No. E/81/05 by the Tribunal in their favour. Therefore, he seeks upholding the order of the Commissioner (Appeals).

6. We have carefully considered the submissions from both sides. We find that identical issue stands decided by the Tribunal in respect of the same respondents in the Final Order dated 7.10.09 in Appeal No. 81/2005 relating to earlier period namely, December 2003 to Jan 2004. The present dispute is for the subsequent period. In view of the detailed reasons recorded therein, the appeal of the department deserves to be rejected. As regards the submission of the learned Jt. CDR that the respondents have wrongly availed the benefit of notification No. 67/95, it is to be noted that it is not the case of the Department that the Department seeks to demand duty on SS patta /SS patties on the ground that they have

wrongly availed the exemption under notification No. 67/95. Therefore, the said dispute cannot be raised in the present proceedings.

7. In view of the above, and in view of the detailed reasons given in Tribunal' order dated 7.10.09 in E/A.No. 81/2005, we hold that no valid reason have been adduced to interfere with the order of the Commissioner (Appeals).

8. The appeal by the department is rejected.

(Justice R.M.S. Khandeparkar)
President

(M. Veeraiyan)
Member(Technical)

ss