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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Date 04/05/2011

Appeal No. E/2363/2005 - EX[DB]

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

To :
BLUE PRECISION LTD,
56B, INDL. AREA, N.I.T. FARIDABAD

BLUE PRECISION LTD, Appellant
Vs
C.C.E. DELHI IV Respondent

I am directed to transmit herewith a certified copy of **Final order No.368/ 2011 EX[DB]** dated 28-4-11 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
C.C.E. DELHI IV
NEW CGO COMPLEX, NH-IV,
FARIDABAD, HARYANA 121001.

2. Adv. / Consult
MR.D.K.TYAGI
C-605, CHAWLA COLONY, BALLABGARH(FARIDABAD)

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 NEW DELHI

Date of Hearing:7.4.2011

Date of decision: 28/4/2011

Excise Appeal No.2363 of 2005-Excise (Branch)

[Arising out of Order-in-Appeal No.23/CE/APPL/DL-IV/2005 dated 16.03.2005 passed by the Commissioner of Central Excise (Appeals), Delhi-I].

M/s.Blue Precision Ltd. Appellant

Vs.

CCE, Delhi-IV Respondent

For approval and signature:

Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri Rakesh Kumar, Member (Technical)

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1. Whether Press Reporters may be allowed to see 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?

Appearance: Rep. by Shri D.K. Tyagi, Advocate for the appellant.
Rep. by Shri V. Chaudhary, DR for the respondent.

Coram: **Hon'ble Shri Justice R.M.S. Khandeparkar, President**
Hon'ble Shri Rakesh Kumar, Member (Technical)

FINAL Order No. 368/2011-EX/Dated:

Per Rakesh Kumar

The facts giving rise to this appeal are as under:-

1.1 The appellants are manufacturer of Aluminium Alloys chargeable to central excise duty under sub-heading No.7601.10 of the Central Excise Tariff. Besides this, they also received die Cast Aluminium Decorative Tiles which are subjected to the process of cleaning, buffing, lacquering, grinding and electroplating so that such castings are useable as wall tiles. The appellant also availed Cenvat credit under Cenvat Credit Rules of the central excise duty paid on inputs and capital goods used in or in relation to the manufacture of their finished products. The appellant during the period of dispute i.e,. May, 2002 to October, 2002 took Cenvat credit amounting to Rs.58,874/- of the duty paid on rough die Cast Aluminium Castings. Department was of the view that the process of cleaning, buffing, lacquering and grinding and electroplating of the rough die Cast Aluminium Castings into the fully finished Aluminium decorative tiles does not amount to manufacture as no new product emerged and hence, the appellant were not eligible for Cenvat credit amounting to Rs.58,874/-. It on this basis that a show cause notice was issued to the appellant for –

(a) recovery of allegedly wrong Cenvat Credit of Rs.58,874/- along with interest on it under Rule 12 of the Cenvat Credit Rules, 2002 read with Section 11A(1) and Section 11 AB of the Cenvat Credit Rules; and

(b) imposition of penalty on the appellant under Rule 13 of the Cenvat Credit Rules, 2002.

1.2 The show cause notice was adjudicated by the Asstt. Commissioner vide Order-in-Original dated 13.07.2004 by which the Asstt. Commissioner holding that the process in respect of rough Castings undertaken by the appellant does not amount to manufacture, confirmed the Cenvat credit demand of Rs.58,874/- along with interest and besides this, imposed penalty of equal amount on them under Rule 13 of the Cenvat Credit Rules, 2002.

1.3 On appeal to the Commissioner (Appeals), the Commissioner (Appeals) vide Order-in-Appeal dated 16.03.2005 upheld the Asstt. Commissioner's order. Against this order of the Commissioner (Appeals), the present appeal has been filed.

2. Heard both the sides.

2.1 Shri D.K. Tyagi, Advocate, ld. Counsel for the appellant, pleaded that conversion of rough die Cast Tiles into fully finished decorative tiles amounts to manufacture as the rough Castings cannot be used as tiles, that the process of cleaning, buffing, lacquering, leasing, grinding and electroplating, etc. undertaken in respect of the rough tile castings are processes ancillary or incidental to the manufacture of the finished products – decorative tiles, that the Hon'ble Supreme Court in the case of **Brakes India Ltd. Vs. Superintendent of Central Excise reported in 1998 (101) ELT 241 (SC)** has held that the process of drilling, trimming and chamfering of brake lining blanks purchased from market amounts to manufacture as these processes are ancillary or incidental to completion of manufacture, that this judgement of the Hon'ble Supreme Court is squarely applicable to the facts of this case, that since the process undertaken by the appellant amounts to manufacture, Cenvat credit of duty paid on rough Tile Castings and other inputs required for these operations has been rightly taken, that no Cenvat credit is recoverable from the appellant and that the impugned order, therefore, is not sustainable. Shri Tyagi, ld. Counsel, also pleaded that the finished decorative Aluminium Wall Tiles manufactured by the appellant had been exported under Bond and hence, in any case, the appellant would be entitled for Cenvat credit under Rule 5 of the Cenvat Credit Rules, 2002. On being asked, ld. Counsel, however, stated that this plea has not been made in the course of proceedings before the Asstt. Commissioner or Commissioner (Appeals).

2.2 Ld. Departmental Representative defended the impugned order by reiterating the findings of the Commissioner (Appeals) and pleaded that the die Cast Aluminium Tiles received by the appellant are by themselves finished products, that a clear finding in this regard has been given by the

Commissioner (Appeals) in para 3 of the impugned order, that the operations undertaken by the appellant have only increased their market value and artistic value and these processes, therefore, would not amount to manufacture, that the Hon'ble Supreme Court in the case of **Gujarat Steel Tubes Ltd. Vs. State of Kerala reported in 1989 (42) ELT 513 (SC)** has held that galvanisation of steel tubes or pipes does not bring a new product into existence, that the Hon'ble Supreme Court in the case of **Union of India Vs. J.G. Glass Industries Ltd. reported in 1998 (97) ELT 5 (SC)** has held that printing/decoration of glass bottles carried thereon does not amount to manufacture, that the Tribunal in the case of **Collector of Central Excise, Bombay-II Vs. A-1 Bright reported in 2001 (130) ELT 896 (Tribunal-Delhi)** has held that electroplating of duty paid M.S. wire does not amount to manufacture as no new commodity comes into existence, that the Tribunal in another judgement in the case of **CCE, Surat-II Vs. P.S.L. Corrosion Control Ltd. reported in 2003 (151) ELT 439 (TR-DELHI)** has held that Coating of steel bars, with epoxy powder does not amount to manufacture as no new commodity has come into existence, that the ratio of the above judgements of the Hon'ble Supreme Court and of the Tribunal are squarely applicable to the facts of this case, that since the processes undertaken by the appellant on the rough Tiles received by the appellant do not amount to manufacture, no Cenvat credit of duty paid on rough Castings and other inputs would be admissible, as Cenvat credit under

Cenvat Credit Rules, 2002 is available in respect of only those inputs which are used in or in relation to the manufacture of the final products, while in this case, the processes undertaken by the appellant do not amount to manufacture, that in view of this, the Cenvat credit demand and imposition of penalty have been rightly upheld and as such there is no infirmity in the impugned order.

3. We have carefully considered the submissions from both the sides and perused the records. The appellants are receiving the rough die Cast Aluminium decorative tiles. The original adjudicating authority as well as the Commissioner (Appeals) in the impugned order have given a clear finding that the tiles castings as received by the appellant are by themselves useable as tiles and are marketable. The processes undertaken by the appellant like buffing, cleaning, lacquering and grinding, electroplating, etc. only increase their market value or artistic value. In our view, the processes undertaken by the appellant on the rough Tiles Castings are akin to the printing or decoration of glass bottles, or electroplating of M.S.Wires, which have been held to be the processes not amounting to manufacture. The judgement of the Hon'ble Supreme Court in the case of **Breaks India Ltd. (supra)** cited by the appellant is not applicable to the facts of this case as in

blanks were

the case of **Braks India Ltd.** (supra) the brake lining, being subjected to the various processes for manufacture of brake lining,

the blanks

and could not be used as by owners of motor vehicles without making holes, trimming and chamfering, while in this case, the Aluminium Castings, as received by the appellant were usable as such and the processes undertaken by the appellant have resulted in increasing their decorative value and hence the market value. It is settled law that the processes, which do not change the basic character of the product but only enhance its market value, do not amount to manufacture. Since the processes undertaken by the appellant do not amount to manufacture, the appellant were not eligible for Cenvat credit and hence, the Cenvat credit has been rightly denied to them. We, therefore, do not find any infirmity in the impugned order. The appeal is dismissed.

(pronounced in open court on.....28/4/14.....)

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Member (Technical)

Ckp.