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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

Appeal No. E/1911/2005 - EX[DB]   Date **02/05/2011**

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

To :
C.C.E.GHAZIABAD

C.G.O.COMPLEX-I,GHAZIABAD U.P.

C.C.E.GHAZIABAD Appellant

Vs

M/S CENTRAL ELECTRONICS LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.378/ 2011 EX[DB]** dated 20-4-11

passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
M/S CENTRAL ELECTRONICS LTD.
4. INDUSTRIAL AREA
SAHIBABAD GHAZIABAD U.P.

2. Adv. / Consult SH. RAJESH CHHIBBER, ADV,
FA-2, KAVI NAGAR, GHAZIABAD

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)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R. K. Puram, New Delhi
COURT-I

Date of hearing/decision: 20.04.2011

For approval and signature:

Hon'ble Shri Justice R.M.S. Khandeparkar, President
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.	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?	Yes
4	Whether Order is to be circulated to the Departmental authorities?	Y

Excise Appeal No. 1911 of 2005
[Arising out of Order in Appeal No. 50-CE/GZB/2005 dated 19.4.2005 passed by the Commissioner (Appeals), Central Excise Ghaziabad].

CCE, Ghaziabad — Appellants
[Rep. by Shri Nitin Anand, DR]

Vs.

M/s Central Electronics Limited — Respondent
[Rep. by Sh. Rajesh Chhibber, Advocate]

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

FINAL Oral Order No. 378/2011-EX

Per Shri Justice R.M.S. Khandeparkar:

Heard the DR for the appellant and learned Advocate for the respondents.

2. This appeal arises from order dated 19.04.2005 passed by the Commissioner (Appeals) Ghaziabad. By the impugned order, the Commissioner (Appeals) rejected the appeal filed by the department against the order passed by the adjudicating authority. The Deputy Commissioner, Ghaziabad by his order dated 29.12.2003 dropped the proceedings which were sought to be initiated against the respondent for denial of credit to the tune of Rs.29,34,360/- on the batteries used in the manufacture of captive power generation and distribution system for GAIL.

3. The respondents are engaged in manufacture of electrical/ electronics machinery and equipments and part thereof classifiable under chapter 85 of the schedule to the Central Excise Tariff Act, 1985. They had availed modvat facility in terms of Rule 57G and 57T of the erstwhile Central Excise Rules, 1944. The respondents availed and utilized such credit amounting to Rs. 29,34,360/- on the batteries as inputs during the period from July 1997 to November 1997. A show cause notice dated 09.03.1998 came to be issued to the respondents on the ground that the said inputs were neither brought into factory nor any manufacturing activity /processing was carried out thereon. The respondents contested the proceedings while contending that the inputs in question were received by them at different sites of the project awarded to them by M/s GAIL and that the project were funded by Asian Development Bank. It was further case of the respondents that since the system was to be manufactured at various sites, each such site was to be considered as the part of manufacturing premises for that system, the goods received at those sites by the assessee ought to be considered as having been received in the factory premises of the respondents.

4, Both the authorities below accepted the contention sought to be raised on behalf of the respondent and disagreed with the contention sought to be raised on behalf of the department.

5. Perusal of the records clearly disclose that apart from alleging that the inputs were neither brought into the factory nor any manufacturing activity or processing thereon in the factory premises of the respondents was carried on, no other material placed on record by the department so as to deny the benefit of credit on such inputs to the respondents. It was the specific case of the respondents that the goods were subjected to payment of duty, they were duly received by the respondent, they were utilized in the final product manufactured by the respondents, and the final product was a dutiable product. All these facts were never in dispute in the entire proceedings and being so, we do not find any justification for interference with the concurrent findings arrived at by the authorities below. Hence, the appeal fails and is hereby dismissed.

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Member (Technical)

/Pant/