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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 **11/07/2011**

Appeal No. E/1975/2005 - EX[DB]

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

To :
M/S. BHARAT HEAVY ELECTRICALS LTD.
BLOCK VI, ANNEXE-WWGF,PIPLANI, BHOPAL
462023

M/S. BHARAT HEAVY ELECTRICALS LTD. Appellant

Vs

C.C.E BHOPAL Respondent

I am directed to transmit herewith a certified copy of **Final order No.588/ 2011 EX[DB]** dated 05-7-11 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 BHOPAL
HOSHANGABAD ROAD, 48,
ADMINISTRATIVE AREA, AREA
HILLS, BHOPAL (M.P.) 462011

2. Adv. / Consult
MR.Z. U. ALVI , ADV,
D-8,BDA COLONY, ADJACENT GARUDA TRAVELS. KOH-E-FIZA BHOPAL-01

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.

Date of hearing/decision 05.07.2011

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.	NO
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

Excise Appeal No. 1975 of 2005
[Arising out of order in original No. 10-11/COMMR/CEX/2005 dated 28.3.2005 passed by the Commissioner of Customs & Central Excise, Bhopal]

M/s Bharat Heavy Electricals Limited — Appellants

Vs.

CCE, Bhopal — Respondent

Appearance:

Rep. by Sh. Z.U. Alvi, Advocate for the appellants.
Rep. by Sh. S. R. Meena, DR for the respondent.

Coram: **Hon'ble Sh. Justice R.M.S. Khandeparkar, President**
Hon'ble Sh. M. Veeraiyan, Member (Technical)

FINAL ORAL ORDER NO. 588/2011-EX

Per: Shri M. Veeraiyan:

This is an appeal against the order of the Commissioner No. 10-11/COMMR/CEX/2005 dated 28.03.2005.

2. Heard both sides.

3. There are two issues which require to be decided in this appeal.

i) The appellant imported a consignment and bill of entry was filed in the name of its International Operation Division and the imported goods have been received in the appellant's factory at Bhopal and credit of Rs. 6,28,351/- has been taken. The department has denied the credit on the ground that the International Operation Division of the appellant has not endorsed the bill of entry in the name of appellant's factory which is in violation of the procedure prescribed by the Board vide Circular No. 179/13/96-CX dated 29.2.1996.

ii) The second issue relates to denial of credit in respect of inputs procured by the appellant from Hindustan Copper Limited which were not received in the factory of the appellant but directly sent to the job worker and the intermediate products manufactured by the job worker was received by the appellant from the job worker who cleared the said goods after availing the benefit of Notification No. 214/86 dated 25.3.1986. The department has denied the credit on the ground that the materials procured from Hindustan Copper Limited have not been received in the factory and has not been sent from the premises of the appellant under challans to the job worker and this is in violation of the procedure prescribed under Circular No. 33/33/94-CX.8 dated 4.5.94.

4. Learned Advocate for the appellant submits that the material required for export production are centrally procured by the International Operation Division and the material has been directly received in the factory from the port of import as evidenced by store receipt voucher, and non-endorsement by the International Operation Division is a technical violation which cannot take away substantial benefit of credit specially when there is no dispute about the materials having been received by the appellant and used for the intended purpose.

4.1 As regards the material procured from Hindustan Copper Limited, he submits that to avoid unnecessary transportation and freight, the material procured were sent directly to the job worker's premises and the intermediate product was received in their factory premises and the job worker has availed the benefit of Notification No. 214/86. The appellant has also given undertaking to the jurisdictional Central Excise authorities in charge of job worker for availing the benefit of Notification No. 214/86 and accordingly the department has allowed duty free movement of the goods manufactured by the job worker to the appellant's premises. Therefore, in this case also the inputs though not physically received by the appellant's factory as inputs the intermediate products manufactured using the said inputs have been received from the job worker's premises.

5. Learned DR submits that in both cases the appellant have failed to follow the procedure prescribed and, therefore, they are not entitled to the

benefit of the cenvat credit. He also submits that no evidence of receipt of the impugned imported goods have been produced by the appellant. In respect of the inputs procured from Hindustan Copper Limited, it has not been received as such in the factory and it has been received only as intermediate product manufactured by the job worker.

6. We have carefully considered the submissions from both sides and perused the record. The findings and reasoning of the Commissioner in denying the credit in these two cases are as follows:-

> "9.5 B/E not in the name of BHEL Bhopal (S. No. 6 of the notice dt. 19.01.2001): It is seen that the assessee had availed credit of Rs. 628351/- on 17.3.2000 on the basis of bill of entry which was not in their name but was in the name of their International Operations Division (IOD) New Delhi. The assessee in this regard have submitted that BHEL's International Operations Division, New Delhi is not a manufacturing unit. It is importing material for and behalf of BHEL units, Bhopal being one of them. The said material imported by their IOD, New Delhi was received in their factory can be verified from the SRV enclosed. As such credit was available to them. Though it is true that BHEL's IOD New Delhi is not a manufacturing unit and it is importing materials for various units of BHEL situated at different places of the country but in such case a proper endorsement to the effect that the goods covered by the said B/E were imported for their Bhopal works was required to have been made before the Customs authorities. However, I find that no such endorsement has been made in the said bill of entry. In the absence of any such endorsement, it is not possible to ascertain as to whether the goods covered by the said B/E were received and used in the assessee's factory only. The credit of Rs. 628351/- availed by the assessee was, therefore, not admissible to them and hence disallowed.
>
> 9.6 Credit availed on goods delivered directly to Ken Electricals, Rewa (S. Nos. 7 & 8 of the notice dt. 19.01.2001): The assessee had availed credit of Rs. 174312.00 and Rs. 178236.00 on 21.3.2000 on the basis of invoices No. 1728 dt. 29.10.99 and 1879 dt. 12.11.99 respectively of M/s Hindustan Copper Ltd. Raigad. Vide these invoices, the goods were not received in the assessee's factory but were sent directly to M/s Ken Electricals, Rewa. In this regard, the assessee have submitted that the material by M/s Hindustan Copper Ltd. was delivered to Ken Electricals on behalf of M/s BHEL, Bhopal as Ken Electricals were to do some job-work on it and thereafter the material was supplied to BHEL Bhopal. In this regard, I find that a

proper procedure was prescribed vide Indore Commissionerate's Trade Notice No. 53/94-CE dt. 21.7.94 which was required to be followed by the assessee. However, I find that the assessee have failed in following the procedure prescribed. They have also not produced any challans issued under rule 57F(4) evidencing movement of inputs/ intermediate goods and/ or any other document evidencing that M/s Ken Electricals had followed the provisions prescribed for availing benefit of Notification No. 214/86-CE dt. 25.3.86. The credit availed of Rs. 3,52,548.00 by the assessee was, therefore, not available to them and hence disallowed".

7.1 Plain reading of the order of the Commissioner clearly indicates that the bill of entry was in the name of the appellant only. It did not mention the factory address instead mentioned the address of International Operations Division. This does not make the document being not in the name of the appellant. The appellant has produced the Stores Receipt Voucher (SRV) as evidence for receiving the material in the factory which has been duly noted by the Commissioner. It is pertinent to note that the appellant's factory in Bhopal comes directly under the jurisdiction of Commissioner, Bhopal and, therefore, the finding that in the absence of endorsement in the bill of entry by the International Operations Division, it was not possible to ascertain as to whether the goods covered by the said bill of entry were received and used in the assessee factory cannot be appreciated.

7.2 As regards the material procured from Hindustan Copper Limited, the submissions of the appellant that they were sent directly to M/s Ken Electricals on behalf of BHEL, Bhopal who were undertaking job work for the appellant and received the processed material in terms of Notification No. 214/86 dated 25.03.86 has been duly noted by the Commissioner. Under these circumstances, the explanation that the appellant have taken constructive delivery of the inputs and instead of receiving it in their factory and then again sending to the job worker has directly sent it to the job worker deserves to be accepted. The fact that the job worker has processed the material and sent the intermediate goods manufactured using the inputs following Notification No. 214/86 has not been refuted. In the given facts and circumstances of the case, the transport of material directly to the job worker's premises to avoid payment of extra period and same time, can not lead to denial of credit.

8. In view of the above, we find that the appellants have in the facts and circumstances of the case complied substantially with the conditions for availing the cenvat credit and minor aberations in not following the procedure prescribed by the Board cannot stand in the way of availing the credit by the appellant.

9. Therefore, the impugned order in so far as the same related to the disallowance of credit of Rs. 980899/- is concerned, the same is set aside. Consequently the penalty of Rs. 3 lakh imposed is also set aside.

10. The appeal is disposed of as above.

[Justice R.M.S. Khandeparkar]
President

[M. Veeraiyan]
Member [Technical]

Pant