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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/702 /2010 - EX[DB] WITH E/S/727/2010-EX & E/M/143/2011-EX   Date **04/08/2011**

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

To :
M/S DRAWMET WIRES PVT. LTD.

B-482, INDUSTRIAL AREA, BHIWADI-301019, (RAJ.)

M/S DRAWMET WIRES PVT. LTD. Appellant

C.C.E. JAIPUR I **STAY ORDER NO.784/2011-EX** Vs
MISC ORDER NO. 427/2011-EX Respondent

I am directed to transmit herewith a certified copy of **Final order No.694 2011 EX[DB]** dated 08-4-11

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. JAIPUR I
N.C.R.BUILDING, STATUE
CIRCLE, "C" SCHEME, JAIPUR
302005.

2. Adv. / Consult SH. T. R. RUSTOGI, ADV,
SD-84, TOWER APARTMENTS,
PITAMPUR, DELHI-34

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 Misc. Application No. 143 /2011
Excise Appeal No. 702 /2010

M/s. Drawmet Wires Pvt. Ltd. — Appellants

Vs.

Commissioner of Central Excise
Jaipur I — Respondent

Appearance:

Shri T.R. Rustogi Advocate for the Appellants
Shri N. Anand, DR for the Respondent

CORAM:

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

Date of Hearing/decision : 8.4.2011

Misc. **ORDER** No: 427/2011-EX

Per Shri Justice R.M.S. Khandeparkar (for the Bench):

Heard the advocate for the appellants and DR for the respondents.

2. Considering the fact that the issue involved in the matter relates to non-reversal of the credit availed on duty paid inputs which were utilized in production of final products manufactured by the appellants

and in view of section 5B of the Central Excise Act, 1944 read with notification No. 28/2010 CE (NT) dated 1.9.2010, the appellants are not liable to reverse the credit subject to the conditions mentioned in the said notification. As the advocate for the appellants has stated on instructions that the appellants have complied with all the three conditions mentioned in the said notification including that the appellants have neither preferred the claim for refund nor intend to prefer any such claim as specified in condition (c) to the said notification, the application deserves to be allowed and is accordingly, hereby allowed. The order dated 10.1.11 is hereby recalled and stay application is restored to the Board and directed to be listed for today forthwith.

3. Application accordingly stands disposed of.

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Member(Technical)

ss

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

Excise Stay Application No. 727 /2010
Excise Appeal No. 702 /2010

M/s. Drawmet Wires Pvt. Ltd. Appellants

Vs.

Commissioner of Central Excise Respondent
Jaipur I

Appearance:

Shri T.R. Rustogi Advocate for the Appellants
Shri N. Anand, DR for the Respondent

CORAM:

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

Date of Hearing/decision : 8.4.2011

STAY **ORDER** No. 784/2011-EX

Per Shri Justice R.M.S. Khandeparkar (for the Bench):

Heard in terms of orders passed today in Misc. application No. 143/2011. As we propose to dispose of the appeal itself, the stay application is allowed without insisting for any pre-deposit while directing the Registry to place Appeal No. E/702/2010 for hearing forthwith.

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Member(Technical)

ss

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

Excise Appeal No. 702 /2010

[Arising out of Order-in-Appeal No. 04(DK)CE/JPR-I/ 2010 dated 4/5.1.2010 passed by Commissioner of Central Excise (Appeals), Jaipur I]

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?	:	Seen
4. Whether Order is to be circulated to the Departmental authorities?	:	Yes

M/s. Drawmet Wires Pvt. Ltd. — Appellants

Vs.

Commissioner of Central Excise
Jaipur I — Respondent

Appearance:

Shri T.R. Rustogi Advocate for the Appellants
Shri N. Anand, DR for the Respondent

CORAM:

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

Date of Hearing/decision : 8.4.2011

FINAL **ORDER** No. 694/2011-EX

Per Shri Justice R.M.S. Khandeparkar (for the Bench):

Heard the appeal in terms of order passed today in stay application No. 727/2010. The appeal arises from order dated 4.1.10 passed by the Commissioner, Jaipur. By the impugned order the appeal was disposed of modifying the order passed by the adjudicating authority. The Joint Commissioner, Jaipur by his order dated 10.8.04 had disallowed the cenvat credit amounting to Rs.17,65,316/- and ordered recovery thereof along with interest and penalty of Rs.2 lakh. The learned advocate drawing our attention to section 5 B of Notification No. 28/10-CE(NT) dated 1.9.2010 submitted that the impugned order is liable to be set aside in view of the said notification as the appellants have complied with the conditions of said notification and a claim in that matter do not relate to the period prior to 8.7.2004.

Section 5B reads as under:-

> "**Non-reversal of Cenvat credit**. – Where an assessee has paid duty of excise on a final product and has been allowed credit of the duty or tax or cess paid on inputs, capital goods and input services used in making of the said product, but subsequently the process of making the said product is held by the court as not chargeable to excise duty, the Central Government may, by notification, order for non-reversal of such credit allowed to the assessee subject to such conditions as may be specified in the said notification:
>
> **Provided** that the order for non-reversal of credit shall not apply where an assessee has preferred a claim for refund of excise duty paid by him:

Provided further that the Central Government may also specify in the notification referred to above for non-reversal of credit, if any, taken by the buyer of the said product."

The Notification No.28/2010-CE (NT) dated 1.9.2010 reads thus:-

"Cenvat credit taken on inputs, capital goods and input services used in making of wires from wire rods not to be reversed till specified period.- In exercise of the powers conferred by section 5B of the Central Excise Act, 1944 (1 of 1944), the Central Government hereby orders that where an assessee has paid duty of excise on wires drawn from wire rods (hereinafter referred to as final product), falling under Chapter 72 of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), the CENVAT credit taken or utilized, of the duty or tax or cess paid on inputs, capital goods and input services used in the making of the said final product, shall not be required to be reversed, notwithstanding that the process of drawing of wires from wire rods was held as not amounting to manufacture by the Supreme Court in Civil Appeal No. 74 of 2001 with C.A. Nos. 96, 1701, 4206 of 2002 and 1988 of 2003, decided on the 27th March, 2003 in the case of *Collector of Central Excise* v. *Technoweld Industries*, reported in 2003 (155) ELT 209 (S.C.), subject to following conditions, namely :-

(a) the said non-reversal shall be allowed only for the CENVAT credit taken upto the 8th of July, 2004.

(b) the said non-reversal shall be allowed only when excise duty has been paid on removal of the said final product.

(c) the said assessee shall not prefer a claim of refund of the excise duty paid by him on the said final product :

Provided that the CENVAT credit, if any, taken by the buyer of the said final product, of the excise duty paid by the said assessee on the said final product made and cleared upto the 8th of July, 2004 shall not be required to be reversed."

2. The fact that the appellants have complied with the conditions of the said notification is not in dispute and the same is affirmed from the records, it has been informed to the Tribunal by the advocate for the appellants on instructions from the appellants that the appellants have neither preferred any claim for refund nor intends to file any such claim for the purpose of compliance of clause (c) of the said notification as

rightly submitted by the learned advocate for the appellants, the entire demand be quashed in this regard and consequently the order for penalty is also to be set aside.

3. For the reasons stated above, therefore the appeal succeeds. The impugned order hereby set aside and demand thereunder is quashed. Appeal accordingly stands disposed of.

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Member(Technical)

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