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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/1135/2011 - EX[DB]
E/S/1452/2011

Date **01/12/2011**

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

To :
M/S AGARWAL MARBLE & INDUSTRIES PVT. LTD.
F-282-284, ROAD NO. 9-J, V.K.I. AREA, JAIPUR
(RAJASTHAN)

M/S AGARWAL MARBLE & INDUSTRIES PVT. LTD. Appellant

Vs

C.C.E. JAIPUR I Respondent

Stay order No. 1341/2011-EX

I am directed to transmit herewith a certified copy of **Final order No.** 1001/2011 **EX[DB]** dated 21-11-2011 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
MR.BIPIN GARG ADV.
B-1/1289-A, VASANT KUNJ
NEW DELHI-70

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

Assistant Registrar
(Excise Appeal Branch

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
Court No.III

E/S 1452/11 in E/Appeal No.1135/2011

(Arising out of order in appeal No. 71/DKV/CE/JPR.1/2011 dated 1.3.2011 passed by the Commissioner of Customs & Central Excise, (Appeals), Jaipur).

Date of Hearing: 21.11.2011

For Approval and signature:

Hon'ble Mr Archana Wadhwa, Member Judicial
Hon'ble Mr.Mathew John, Technical Member

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 would be released under Rule 27 of the CESTAT (Procedure) rules, 1982 for publication in any authoritative report or not?	Yes
3.	Whether their lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	Yes

M/s Agarwal Marble & Industries Pvt Ltd — Appellants

Vs

CCE, Jaipur — Respondent

Appeared for the Appellant: Shri Mayank Garg, Advocate
Appeared for the Respondent: Shri I. Beg, DR

Coram: **Hon'ble Mrs. Archana Wadhwa, Member(Judicial)**
Hon'ble Shri Mathew John, Member (Technical)

STAY ORDER No. 1341 / 2011-EX
FINAL ORDER No. 1001 / 2011-EX

Per Archana Wadhwa:

After dispensing with the condition of pre-deposit, we proceed to dispose of the appeal itself with the consent of both the sides in as much as the issue lies in a narrow compass.

2. The appellants received capital goods in the year 2006-07. Instead of availing 50% of the credit of duty paid on the said capital goods, subject to the extent of Rs. 1,89,520/-, they availed the entire 100% credit for the year 2006-07 itself. However, they realized their mistake and paid the interest on the said wrongly availed credit in as much as, the same was admittedly available to them in the next financial year 2008-09.

3. In the above background, proceedings were initiated against the appellants by way of show cause notice dated 23.9.09 for denial of the modvat credit to the extent of 50% availed in excess of the admissible limit. The original Adjudicating Authority vide his impugned order, observed as under:-

"I confirm the demand of irregularity availed Cenvat credit of Rs. 1,89,520/- in respect of 100% availment of cenvat credit on capital goods and order to recover this amount from the assesse under Rule 14 of Cenvat Credit Rules, 2004 read with proviso to sub-section (1) of Section 11A of Central excise Act, 1944.However, this amount shall be available as valid credit in the account of the assesse on or after 1.4.2007 as per provisions of law."

4. The appellants filed appeal against the order before the Commissioner (Appeals) who held as under:-

"As regards wrong availment of cenvat credit amount to Rs. 1,89,520/- on capital goods, I find that Rule 4(2)(a) of the Cenvat Credit Rules, 2004 prescribes that the cenvat credit in respect of capital goods received in a factory at any point of time in a given financial year is to be taken only for an amount not exceeding 50% of the duty paid on such capital goods in the same financial year. However, the appellant had taken more credit of Rs. 1,89,520) during the financial year 2006-07 and this mistake has also been admitted by Shri Vijay Kumar Agarwal in his statement dated 4.6.2008 recorded under section 14 of the Central Excise Act, 1944 stating therein that the same has been taken by mistake of an employee and therefore, the appellant has irregularly availed cenvat credit of Rs. 1,89,520/- which is rightly recoverable from the appellant along with interest under Rule 14 of Cenvat Credit Rules, 2004. I find no reason to interfere with the impugned order and uphold the impugned order to the extent of confirmation of demand of Rs.1,89,520/- along with interest leviable thereon. Held accordingly."

5. We find from the above reproduced para of the impugned order that after denying the credit of Rs. 1,89,520/- during the period 2006-07, the original Adjudicating Authority has observed that the same shall be available as valid credit in the account of the assesse after 1.4.07. As such, in a sense, no demand stands confirmed against the appellant. The denial of credit for the relevant period i.e. prior to 1.4.07 was necessary for the purpose of interest which the appellants are not disputing and have paid the same. The Commissioner (Appeals) has only endorsed the views adopted by the Deputy Commissioner. As such, it becomes clear that nothing survives in the present appeal as no further payment, either on modvat credit or on

interest is due from the appellant. The Stay petition and appeal are disposed of in the above manner.

(Order dictated and pronounced in the open Court.)

(MATHEW JOHN)
Member (Technical)
MPS*

(ARCHANA WADHWA)
Member (Judicial)