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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/813 /2006-815 /2006 - EX[DB] Date **07/12/2011**

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

To :
CCE,JAIPUR-II

CCE,JAIPUR-II, NEW CENTRAL REVENUE BUILDING,
STATUE CIRCLE, C-SCHEME.

CCE,JAIPUR-II Appellant

Vs

RELIANCE CHEMOTEX IND. LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No. 1009-1011/ 2011 EX|DB|** dated 29-11-11 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
RELIANCE CHEMOTEX IND. LTD.
RELIANCE CHEMOTEX IND.
LTD.VILLAGE-KANPUR,
DISTT.UDAIPUR(RAJASTHAN)

2. Adv. / Consult
MR.K.K ANAND
A-5,BASEMENT,LAJPAT NAGAR-III NEW DELHI-24

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 (Harvana)
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. SHREE RAJASTHAN TEXCHEM LTD-DUNGARPUR.(RAJ.)
15. SHRI VIKAS LADIA, EXECUTIVE DIRECTOR.
M/S SHREE RAJASTHAN TEXCHEM LTD.DUNGARPUR(RAJASTHAN)

Assistant Registrar
(Excise Appeal Branch)

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

Excise Appeal No. 813 -815 of 2006

[Arising out of Order-in-Appeal No. 852-855(HKS)CE/JPR-II/2005 dated 16.12. 2005 passed by the Commissioner of Customs & Central Excise (Appeals), Jaipur-]

For approval and signature:
Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Mathew John, Member (Technical)

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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?	:	Yes

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Commissioner of Central Excise . Jaipur	Appellants

Vs.

Reliance Chemotex Ind.Ltd. Shree Rajasthan Texchem Ltd. Shri Vikas Ladia	Respondents

Appearance:

Shri Sunil Kumar, SDR for the Appellants
Shri K.K. Anand, & Shri B.L. Narasimhan, Advocates for the Respondents

CORAM:

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

Date of Hearing /decision: 22.11.2011

FINAL **ORAL ORDER NO.** 1009 – 1011/2011-EX

Per Archna Wadhwa (for the Bench):

Being aggrieved with the order passed by Commissioner (Appeals) vide which he has allowed the respondents appeal, Revenue has filed the present appeal.

2. We have heard Shri Sunil Kumar, learned DR and Shri K.K. Anand learned advocate and Shri B. L. Narasimhan learned advocate appearing on behalf of respondents.

3. Briefly stated the facts are that the respondents are engaged in the manufacture of man-made yarn. To ensure uninterrupted supply of electricity, they established ~~the~~ a power plant within their factory. For the said purpose, the respondents placed a purchase order on M/s. Wartsila Finland OY for supply of heavy fuel power plant with auxiliary. The respondents themselves imported DG sets under EPCG scheme and placed order on M/s. Wartsila Finland for supply of local equipment for the installation of DG sets.

4. As the respondents had availed the Cenvat credit on various parts of the DG sets, proceedings were initiated against them for denial of the same culminating into an order passed by the original adjudicating authority who confirmed the demands along with imposition of penalty.

5. On appeal against the above order, Commissioner (Appeals) allowed the same observing as under:

> "*11. I find that the primary issue to be decided in this case is whether the appellants are manufacturer for the subject goods or M/s. Wartsila ~~Finlant~~ India Ltd. The appellants have relied upon the decision of the Hon'ble Tribunal in the case of Gujarat Ambuja Cements Ltd. vs. CCE, Chandigarh – 2001 (130) ELT 129 (T). I have gone through the said decision and find that it is squarely applicable to the present case. In that case M/s. Gujarat Ambuja Cements Ltd. entered into a contract with M/s Wartisila Diesel India Ltd. for supply of two DG sets. M/s. Wartisila Diesal India Ltd. supplied the various equipments / parts of DG sets either directly from their factory or arranged the supply by different vendors and manufacturers directly to the factory of M/s. Gujarat Ambuja Cements Ltd. where these DG sets were assembled and their erection and commissioning was supervised by the engineers of M/s. Wartisila Diesel India Ltd. The Hon'ble Tribunal held in that case that the place where the DG sets were assembled, was the factory premises of M/s. Gujarat Ambuja Cements Ltd. and it cannot be treated as the factory of M/s. Wartisila Diesel India Ltd. Thus M/s. Gujarat Ambuja Cements Ltd. were hold to be manufacturer and their appeal was allowed. Likewise in the instant case also the DG sets were assembled at the factory of the appellants and therefore, they would be the manufacturer for the same.*
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> *12. The appellants also succeed in their submission that generation of intermediate exempted goods would not jeopardize the claim of the credit in the light of the Hon'ble Tribunal's decision in the case of SAIL vs. CCE Raipur [2001 (132) ELT 401]. The Hon'ble Tribunal following the ratio of its earlier decision in the case of CCE Meerut vs. Flex Laminators [2000 (124) ELT 858], held that the credit in respect of the inputs in*

the manufacture of exempted intermediate goods which are, in turn, used captively for manufacture of final dutiable product are not to be denied. In the instant case even if the DG sets assembled at site of installation are termed to attract nil duty in the light of Tariff E.No. 8502.10, the credit taken on the components used for such DG sets cannot be denied in the light of the above decisions as the DG sets in question had ultimately been used for the manufacture of dutiable goods. In view of the above, I do not find the impugned orders of the adjudicating authority sustainable."

6. Revenue in their memo of appeal have again raised the very same ground which were the reasons adopted by the original adjudicating authority. As regards the applicability of the Tribunal's decision in the case of Gujarat Ambuja Cement Ltd., followed by Commissioner (Appeals), it stands contended that the said decision was given by the Tribunal by relying upon the provisions of Rule 57 T (7) of the erstwhile Central Excise Rules 1944 which provided that "the Assistant Commissioner may on sufficient cause being shown to him, allow the manufacturer to take credit of the specified duties on capital goods paid by a contractor or job worker who undertakes the job of initial setting up, renovation, modernization or expansion of the plant on behalf of the manufacturer of final products, subject to such procedure and conditions as may be specified by the Commissioner or the Central Board of Excise and Customs". It is the revenue's contention that as Rule 57T (7) does not exist, the said decision would not be applicable.

8. We find no justification in the above reasoning of the Revenue. Infact we find that the issue stands completely covered in favour of the assessee by the Tribunal's judgement in the case of Gujarat Ambuja. In fact the person who had entered into a contract in that case was the same person i.e. M/s. Wartisila Diesel upon whom the contract stands placed in the present case. Infact, we find the Tribunal while deciding in favour of the assessee held that the resort of the provision of Rule 57 T(7) need not be made. The said decision of the Tribunal stands confirmed by the Hon'ble High Court of Himachal Pradesh when the appeal filed by the Revenue was rejected as reported in CCE vs. Gujarat Ambuja Cement Ltd [2010 (256) ELT 356 (HP)]. As such, we find no reasons to take a view different from the one taken in the case of Gujarat Ambuja. By following the same, we reject the appeals filed by the Revenue.

(Pronounced in the open Court)

(Archana Wadhwa)
Member(Judicial)

(Mathew John)
Member(Technical)

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