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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/800 /2010 - EX[DB] WITH E/S/846/2010-EX   Date **27/12/2011**

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

To :
M/S. PROXIMA STEEL FORGE PVT. LTD.
B-15, FOCAL POINT, PHASE-II, JALANDHAR.

M/S. PROXIMA STEEL FORGE PVT. LTD. Appellant

Vs

C.C.E. LUDHIANA **STAY ORDER NO. 1620/2011-EX** Respondent

I am directed to transmit herewith a certified copy of **Final order No. 1053/ 2011 EX|DB|** dated 16-12-11 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. LUDHIANA
CENTRAL EXCISE HOUSE, 'F'
BLOCK, RISHI NAGAR,
LUDHIANA 141001 (PUNJAB)

2. Adv. / Consult
MR.SUDHIR MALHOTRA.
13-R, HUKAM CHAND COLONY, NEAR D.A.V COLLEGE, JALANDHAR

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
West Block No.2, R. K. Puram, New Delhi.

Date of hearing/decision: 14.12.2011

For approval and signature:

Hon'ble Sh. S.S. Kang, Vice President
Hon'ble Sh.Mathew John, Memmber (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?	NC
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?	NC

Excise Appeal No. 800 of 2010 with Excise Stay No. 846 of 2010
(Arising out of order-in-Appeal No. 17/CE/Ldh/2010 dated 20.01.2010 passed by the Commissioner (Appeals) Customs & Central Excise, Chandigarh).

M/s Proxima Steel Forge Pvt. Limited — Appellants

Vs.

CCE, Ludhiana — Respondent

Appearance:

Rep. by Sh. Sudhir Malhotra, Advocate for the appellants.
Rep. by Sh. S. R. Meena, AR for the respondent.

Coram: **Hon'ble Sh. S.S. Kang, Vice President**
Hon'ble Sh. Mathew John, Member (Technical)

STAY ORDER NO. 1620/2011-EX
FINAL ORDER NO. 1053/2011-EX

Per: S.S. Kang

Heard both sides.

2. Applicant filed this application for waiver of pre-deposit of Rs.16,99,988/- interest and penalty. Demand is in respect of the credit availed on the inputs which contained in the goods under processe~~d~~ as well as finished goods lying in stock as on 1.4.2007 on the date, applicants opted to avail benefit of small scale exemption.

3. The contention of the applicant is that applicant has reversed the credit which was in their balance on 31.3.2007. In case the revenue is of the opinion that ~~is~~ they did not reverse~~d~~ total credit, the benefit of small scale exemption should be denied instead of asking for credit of duty in respect of inputs contained in goods under process or in the finished gppds. The contention is that during the period in dispute from 01.04.2007 to 21.06.2007, appellant exported all the goods and in respect of goods which were exported, there is no bar for taking credit as applicant claimed DEPB benefit which is admissible along with cenvat credit on inputs ~~goods~~. The applicant had not claimed drawback of excise duty paid in respect of goods exported.

4. The contention of revenue is that as applicant opted for availing the benefit of small scale exemption, as per the Cenvat Credit Rules ~~which~~ they are not entitled for any credit. The applicant is liable to reverse credit in respect of inputs used in the goods under processe~~d~~ as well as finished goods lying in stock. ~~reversed~~ Therefore, applicant has wrongly availed the benefit of small scale exemption and demand is rightly made.

as per the submissions of applicant,

5. We find that, during the period from 01.04.2007 to 21.06.2007 the applicant had not cleared the goods to the domestic market by availing the benefit of small scale exemption notification. Goods were reportedly exported and this fact is not in dispute. In these circumstances, we find that applicant has made out a strong prima-facie case in their favour for waiver of dues. Therefore, the duty, interest and penalty is waived for hearing of the appeal. Stay petition is allowed. We find that Commissioner (Appeals) dismissed the appeal filed by the applicant for non-compliance to the provisions of Section 35F of the Central Excise Act, 1944 as applicant failed to compliance of the conditions of stay order. The appeal has not been decided on merit. As we waived the dues for hearing of appeal therefore, the impugned order is set aside and matter is remanded back to the Commissioner (Appeals) to decide the appeal afresh on merit after affording an opportunity of hearing to the applicant. Appeal is allowed by way of remand.

(Dictated and pronounced)

(S.S. Kang)
Vice President

(Mathew John)
Member (Technical)

Pant