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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 10/04/2012

Appeal No. E/2420/2005 - EX[DB]

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

To :
C.C.E. NOIDA
C-56/42, SECTOR-62, NOIDA-201307

C.C.E. NOIDA Appellant

Vs

M/S SALORA INTERNATIONAL LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No. A/428/ 2012 EX[DB]** dated 10-4-12 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
M/S SALORA INTERNATIONAL LTD.
MATUSHITA TELEVISION &
AUTIO INDIA LTD.C-52,PHASE-
II,NODIA

2. Adv. / Consult
MR.RAJESH KUMAR
24A, DDA SFS FLAT, MOUNT KAILASH, EAST OF KAILASH, N.DELHI

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-3
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)

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

Excise Appeal No. 2420 of 2005

Date of Hearing/decision : 09.02.2012
Date of Pronouncement : .2012

[Arising out of Order-in-Appeal No. 45-CE/ APPL /NOIDA/2005 dated 8.4.2005 passed by the Commissioner of Customs & Central Excise (Appeals), NOIDA]

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 NOIDA — Appellants

Vs.

M/s. Salora International Ltd. — Respondent

Appearance:

Shri Sunil Kumar, SDR for the Appellants
Shri Rajesh Kumar, Advocate for the Respondent

CORAM:

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

FINAL **ORAL ORDER NO. A/428/2012-EX(BR)**

Per Archana Wadhwa (for the Bench):

Being aggrieved with the order passed by Commissioner (Appeals), Revenue has filed the present appeal.

2. We have heard Shri Sunil Kumar, learned DR appearing for the Revenue. Shri Rajesh Kumar, learned Advocate for the respondents.

3. As regards the allegation of making the entries in RG 23 A prior to actual receipt of the imported goods, Commissioner (Appeals) referred to Notification No. 7/99-CE (NT) dated 9.2.1999 vide which sub-rule (11) was inserted in Rule 57G. The said rule is to the effect that credit under sub-rule (2) shall not be denied on the ground that any of the documents mentioned in sub rule (3) does not contain all the particulars required to be contained therein under these rules, if the details of payment of duty, description of the goods, assessable value name and address of the factory or warehouse are given in the said documents. He also referred to Board's Circular No. 441/7/99-CX dated 23.2.99 wherein it was clarified that the Asstt. Commissioner before issuing show cause

notices for wrong availment of Cenvat credit by the assessee on any procedural ground, shall conduct the inquiry with regard to duty paid nature of the goods at the suppliers end. The Circular further provided that in case the assessees' invoices contains the details, the credit of duty will not be disallowed.

By referring to the above notification and circular, Commissioner (Appeals) observed that inasmuch as all the details were available in the invoices and name and address of the factory was clearly mentioned, he held that credit cannot be denied to the respondents. The goods in question were actually received by the respondents, as was clear from the gate entries and material received notes. By observing that it is not the department's case that inputs were not received in the factory, were not duty paid, not used in the manufacture of final products or were not received under the cover of proper duty paying documents, the denial of credit is not justified. He accordingly, set aside the confirmation of demand. However, in respect of certain entries, where the quantity did not tally with the quantity shown in the bill of entry, he directed the Deputy Commissioner to allow the credit after verification of the quantity of inputs received from the internal material receipt records of the assessee., by taking into account the assessees submission that against one of bill of entry, the goods were entered in RG I register in different lots.

4. The Revenue's contention in the memo of appeal is that Notification No. 7/99- CE read with Boar's Circular No. 441/7/95 C E dated 23.2.99 was not applicable inasmuch as the same were issued subsequent to the period involved. Inasmuch as the said Notification was not in existence, the Commissioner (Appeals) should not have granted benefit of the same to the respondents.

5. We find no merits in the above contention. Admittedly, the introduction of sub-rule (11) in Rule 57G was with an intention to clarify the law and as such was a procedural clarification. Reading of Board's Circular makes it clear that the credit should not be denied on the technical and procedural violations ~~but~~ and wherever there is no dispute about the duty paid character of the goods, their receipt in the assessee's factory and subsequent use in the manufacture of final product, the show cause notices should not be issued for denial of such credit. Admittedly such clarification relate to past period also. Otherwise also there are many Tribunal's decision laying down that such denial of credit on technical and procedural grounds is not justified when otherwise there is no dispute about the availability of the credit.

6. As regards the second contention of the Revenue that he could not remand the matter for verification, we find that Commissioner (Appeals) has rightly observed that there is no dispute on availability of credit on merits. The Revenue's case as projected in the show cause notice was only in respect of procedural violations. In such a scenario,

there is no need for verification of the otherwise admissible modvat credit. Wherever Commissioner (Appeals) has felt that such verification is required he has allowed the credit subject to verification by the Deputy Commissioner. We do not find any infirmity in the views of the Commissioner (Appeals).

7. In view of the above, Revenue's appeal is rejected.

(Pronounced in the open Court on)

(Pronounced)

(Archana Wadhwa)
Member(Judicial)

(Mathew John)
Member(Technical)

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