REGISTERED / AD

FAX : 011-26108426

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK NO.2, R.K.PURAM, NEW DELHI-110066
EXCISE APPEAL BRANCH

Dated: **06/11/2012**

To
1. Appellant as per address in table below
2. Respondent as per address in table below

Final Order No. **A/1309/2012-EX[DB] dated 01/10/2012**

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section **35-C(1) of the Central Excise and Salt Act, 1944.**

Assistant Registrar
EXCISE Appeal Branch

S.No	Application	Appeal	Name and Address of Appellant	Name and Address of Respondent
1.		E/2269/2008	**STEEL AUTHORITY OF INDIA** (UNIT-BHILAI STEEL PLANT), ISPAT BHAWAN, ROOM NO.116, BHILAI, DISTRICT-DURG, CHATTISGARH.	**C.C.E. RAIPUR** Central Excise Building, Dhamtari Road, Tikrapara, Raipur 492001.

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Copy To
1. **Advocate(s) / Consultant(s):** SH. B.L. NARSIMHAN, ADV., B-6/10, S.J. ENCLAVE, N. DELHI-29

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2. Bar Association, CESTAT, Delhi 3. Director Publications, Customs, Excise. I.P. Estate, Delhi

4. M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

5. Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

6. Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

7. Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

8. LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

9. TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

10. Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Ameer Pet, Hyderabad – 500038

11. C.D.R 12. Office Copy 13. Guard File

Assistant Registrar
EXCISE Appeal Branch

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH, NEW DELHI.

Date of hearing:1.10.2012
Date of Decision:

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982.	
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3	Whether Their Lordships wish to see the fair copy of the Order?	
4	Whether Order is to be circulated to the Departmental authorities?	

Excise Appeal No.E/2269 of 2008

(Arising out of Order-in-Original No.Commr/RPR/55-56/2008 dated 17.07.2008 passed by the Commissioner of Central Excise, Raipur).

M/s.Steel Authority of India Ltd. ...Appellant

Vs.

CCE,Raipur ...Respondent

Appearance: Shri B.L. Narsimhan, Advocate for the appellant.
Shri R.K. Verma, DR for the respondent.

Coram : Hon'ble Justice Shri Ajit Bharihoke, President
Hon'ble Shri Rakesh Kumar, Member (Technical)

FINAL Order No. A/1309/2012-Ex (BR)

Per Rakesh Kumar:

The appellants, manufacturers of steel and iron, have captive mines. During the period from April, 2002 to December, 2006, they received certain inputs in the captive mines, which were used there. But at that time, they did not take cenvat credit in respect of these items. Subsequently, in view of the judgement of the Apex Court in the case of **Vikram Cement Vs. CCE 2006 (194) ELT 3 (SC),** they took cenvat credit of these inputs during the period from July, 2007 to March,2007. The total cenvat credit so availed was Rs.2,73,12,779/-. The department issued a show cause notice dated 30.01.08 seeking denial of cenvat credit and its recovery along with interest on the ground that in terms of the provisions of Cenvat Credit Rules 2002/2004 and earlier Central Excise Rules, 1944, the cenvat credit is required to be availed immediately on receipt of the inputs and in this case, the cevnat credit availed by the appellant after a long time from the date of the receipt of the inputs is not admissible. The show cause notice also sought imposition of penalty on the appellant under Rule 15(2) of the Cenvat Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944. The show cause notice was adjudicated by the Commissioner vide order-in-original dated 17.71008 by which the Commissioner confirmed demand for the above mentioned cenvat credit along with interest and imposed equal amount of penalty on the appellant. Against this order of the Commissioner, this appeal along with stay application has been filed.

2. Heard both the sides.

3. Shri B.L. Narsimahan, ld. Counsel for the appellant, pleaded that in terms of the provisions of Cenvat Credit Rules, 2002/2004 and earlier under provisions of Central Excise Rules, 1944, a manufacturer may take cenvat credit in respect of duty paid inputs or capital goods received in the factory immediately on their receipt, that these provisions can not be interpreted to mean that credit has to be taken immediately and the same would not be admissible if there is delay in availment, that there is no time limit prescribed for availment of cenvat credit after receipt of the duty paid inputs/capital goods and all that is required is that such duty paid inputs or capital goods are received in the factory and are used in the manufacture of final products, that the Board vide Circular No.345/2/2000-TRU dated 29.08.2000 has clarified that while Rule 57AC of Central Excise Rules, 1944 provides that cenvat credit may be taken immediately on receipt of the inputs in the factory, this does not mean nor is it even intended that if the manufacturer does not take credit as soon as the

inputs are received in the factory, he would be denied the benefit of cenvat credit; and such an interpretation is not tenable, that in view of this circular of the Board, the ground on which the cenvat credit has been denied is without any basis, that same view has been taken by the Tribunal in the case of **Steel Authority of India Ltd. Vs. CCE, Raipur reported in 2001 (129) ELT 459,** wherein it was held that credit during the period prior to amendment of Rule 57G . . w.e.f. 29.06.1995 not deniable even if credit taken 3-4 years after issue of duty paying documents, that same view has been taken by the Tribunal in the case of **Tamilnadu Petroproducts Ltd. Vs. CCE reported in 2003 (160) 199 (Tribunal-Chennai),** wherein the Tribunal relying upon the Board's circular No.345/2/2000-TRU dated 29.08.2000 held that cenvat credit of Additional Customs Duty paid under Bill of Entry No.18.3.1999 cannot be denied just because the availment of credit was delayed till 1.4.2000 due to omission, that in the case of **CCE Vs. Raghuvar (India) Ltd. reported in 2000 (118)ELT 311 (SC)**, the Apex Court has held that the provisions of Section 11 A of the Central Excise Act, 1944 have no application to any action taken under Rule 57I of the Central Excise Rules prior to its amendment on 6.10.88 and that in view of the above submissions, the impugned order is not correct.

4. Shri R.K. Verma, ld. Departmental Representative, defended the impugned order by reiterating the findings of the Commissioner in it and pleaded that there was no justification for the appellant to avail cenvat credit in respect of inputs received during the period from April, 2000 to Dec., 2006 during Jan. 2007 to March, 2007 period, that on account of the manner in which the credit has been taken by the appellant, the department has no means to verify as to whether the inputs had actually been received or not, that the Tribunal in the case of **J.V. Strips Vs. CCE reported in 2007 (218) ELT 252** has held that when the inputs were received by an assessee during the period July 2001 to March, 2003, and at that time, the credit was not availed by the assessee as and when the inputs were received, it was not correct for him to avail the credit for the entire quantity in July, 2003, that this judgement of the Tribunal is squarely applicable to the facts of this case and in this the Tribunal had held that in view of the phrase "immediately on receipt of the inputs" used in the Cenvat Credit Rules, the credit must be taken after receipt of the inputs without any delay and that in view of this, there is no infirmity in the impugned order.

5. Shri B.L. Narsimhan, Advocate, ld. Counsel for the appellant in rejoinder pleaded that the judgement of the Tribunal in the case of **J.V. Strips Ltd. (supra)** relied upon by the learned DR is a Single Bench judgement,

that during the period 2002-2006 period, on account of judgement of the Apex court holding that an assessee is not eligible for cenvat credit in respect of the inputs used in the mines even if the mines are captive mines, the appellant had not taken credit and only after the Apex Court's judgement in the case of **Vikram Cement (supra)** when the earlier judgement of the Apex Court was reversed, the appellant took the cenvat credit during Jan. 2007 to March, 2007 period in respect of the inputs used in the mines during April 2000 to Dec., 2006 period, that this credit has been correctly taken, as it is not the case of the department that the inputs, in question, had not been received and that since the rule does not prescribe any time limit for taking credit after receipt of the inputs, the credit in this case has been correctly taken.

6. We have carefully considered the submissions from both the sides and perused the records. The undisputed facts in this case are that while the inputs in respect of which the disputed amount of cenvat credit had been taken had been received during April, 2000 to December, 2006 period, the credit was availed only during Jan. 2007 to March, 2007 period. There is also no dispute about the fact that during the period when the inputs, in question, had been received in the mines, the judgement of the Apex Court on the issue as to whether an assessee would be eligible for cenvat credit in respect of inputs used in the mines, even if the mines are captive mines, was against the

appellant and this issue was finally resolved in favour of the appellant only by the Apex Court's judgement in the case of **Vikram Cement (supra).** The point of dispute is as to whether the cenvat credit can be denied if an assessee does not avail the cenvat credit in respect of certain inputs immediately on their receipt.

7. In this regard, sub-rule (1) of Rule 4 of the Cenvat Credit Rules, 2004 reads as under:-

> "The cenvat credit in respect of the inputs may be taken immediately on receipt of the inputs in the factory of the manufacturer a the premises of the provider of output services"

7.1 There are similar provisions in Cenvat Credit Rules, 2002 and Central Excise Rules,1944.

8. From a plain reading of the above provisions, it is clear that what the Rules prescribes is that a manufacturer can avail cenvat credit in respect of certain inputs immediately on their receipt and there is no time limit period prescribed in these rules in this regard. The word 'may' in sub-rule of Rule 4 cannot be read as 'shall'. The Department's contention would have been correct if sub-rule (1) of Rule 4 had provided that cenvat credit in respect of inputs 'shall' be taken immediately on receipt of the inputs. We, therefore,

agree with para 10 of the Board's Circular No.345/2/2000-TRU dated 29.08.2000 in this regard which is reproduced below:-

> "10. Rule 57 AC provides that cenvat credit may be taken immediately on receipt of the inputs in the factory. Some apprehensions have been expressed that if the Cenvat credit is not taken 'immediately', like within 24 hours or so, the field ~~filed~~ officers may deny the Cenvat credit. The idea is that if the manufacturer desires he can take the Cenvat credit at the earliest opportunity when the inputs are received in the factory. This , however, does not mean, nor is it even intended that if the manufacturer does not take credit as soon as the inputs are received in the factor, he would be denied the benefit of CEnvat credit. Such an interpretation is not tenable."

9. We find that the same view has been taken by the Tribunal by the Division Bench of the Tribunal in the cases of **Coromandel Fertilizers Ltd. Vs. CCE (A) reported in 2009 (239) ELT 99 (Tribunal-Bang.)** , **Steel Authority of India Ltd. Vs. CCE reported in 2001 (129) ELT 459 (Tribunal-Delhi)** and **Tamilnadu Petroproducts Ltd. Vs. CCE reported in 2003 (160) ELT 199 (Tribunal-Chennai).** Moreover in this case there was a valid reason also for not taking the credit during April, 2006 to December 2006 period, as the judgements of the Apex Court and the Tribunal on the issue of eligibility for cenvat credit of the inputs used in the

mines were against the appellant and this issue was ultimately decided in the appellant's favour sometimes in 2008. The judgement of the Single Bench of the Tribunal in the case of **J.V. Strips Ltd.** (supra) is not based on correct interpretation.

10. In view of the above discussion, the impugned order is not sustainable. The same is set aside. The appeal is allowed.

[order pronounced on 6/11/2012

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

Ckp.