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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/3969/2010-EX[DB]

Dated: **27/08/2012**

Assistant Registrar
C.E.S.T.A.T. New Delhi
To,
DCM SHRIRAM CONSOLIDATED LTD.,
SHRIRAM NAGAR, KOTA
RAJASTHAN.

DCM SHRIRAM CONSOLIDATED LTD., (Appellant)

VS

C.C.E. JAIPUR I (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **A/976/2012-EX[DB]** dated **23/08/2012** passed by the Tribunal under section **35-C(1) of the Central Excise and Salt 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. **Advocate(s) / Consultant(s):** SH. B.L. NARASIMHAN, ADV, B-6/10, S.J. ENCLAVE, N. DELHI-29

3. **C.D.R**
4. Bar Association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New Delhi
6. M/s Centax Publications 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
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13. Gaurd File

Assistant Registrar
EXCISE Appeal Branch

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

Date of hearing/decision: 31.7.2012
Date of Pronouncement:

E/Appeal No.3969/2010

For Approval and signature:

Hon'ble Justice Ajit Bharihoke, President
Hon'ble Mr. Rakesh Kumar, 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?

2. Whether it would 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 Department Authorities?

M/s DCM Shriram Consolidatd Ltd ... Appellant

Vs

CCE, Jaipur Respondent

Appearance:

Present Shri B.L. Narsimhan, Advocate for appellant
Present Shri S. Jain, DR for Respondent

FINAL ORDER No. A/976/2012-EX(BR)

Per Rakesh Kumar:

The appellant manufacture Cement, PVC resin, Caustic Soda, PVC compound etc. chargeable to Central Excise duty. During the period from August 2008 to December, 2008, in addition to clearances made for home consumption on payment of duty, the appellant also made clearance to SEZ Developers without payment of duty. The

Department was of the view that during the period of dispute, since the clearances made to SEZ Developers were not covered under sub-rule (6)of Rule 6 of Cenvat Credit Rules, 2004, the provisions of sub-rule (2) and (3) of Cenvat Credit Rules, 2004 would be applicable in respect of duty free clearances made to SEZ Developers and since the appellant had used common cenvat credit availed inputs in or in relation to manufacture of dutiable final product cleared on payment of duty and the exempted final product cleared without payment of duty to SEZ Developers and had not made ~~specific~~ separate account and inventory of inputs meant for dutiable and exempted goods, they under Rule 6(3) of the Cenvt Credit Rules, 2004, would be required to pay an amount equal to 10% of the sale value of the goods cleared to SEZ Developers. On this basis, the jurisdictional Assistant Commissioner by order-in original dated 3.11.2009 confirmed the demand of an amount of Rs. 4,11,856/- along with interest and besides this, imposed penalty of equal amount on the appellant. On appeal to Commissioner (Appeals), the Commissioner (Appeals) vide order-in-appeal dated 22.9.2010, while upholding the demand in terms of provisions of Rule 6(3) of Cenvat Credit Rules, 2004 along with interest, reduced the penalty to Rs. 1 lakh. Against this order of the Commissioner (Appeals), this appeal has been filed.

2. Heard both sides.

3. Shri B.L. Narsimhan, learned Advocate for the appellant, pleaded that the issue involved in this case stands decided in favour of the appellant by a Coordinate Bench of the Tribunal in the case of **Sujana Metal Products Ltd Vs CCE Hyderabad 2011 (273) ELT 112 (Tri-**

Bang) wherein the Tribunal has held that even during the period prior to the amendment to Rule 6(6) w.e.f 31.12.08, supplies to SEZ Developers were covered by this sub-rule and hence the same were exempt from the provisions of sub-rules (1), (2) and (3) of Rule 6, that same view has been taken by the Tribunal in the case of **Signum Fire Protection (India) Pvt Ltd Vs CCE Nagpur 2012 TOIL 59 CESTAT MUM**, that though with effect from 31.12.08, supplies to SEZ Developers have been specifically covered by sub-rule (6) of Rule 6 of Cenvat Credit Rules, 2004, even during the period prior to 31.12.08, in terms of the definition of "export" as given in Section 2(m) of SEZ Act, 2005, the term export covered supplies of goods or service from domestic tariff area to a unit in the SEZ or for SEZ Developers, that Section 51 of the SEZ Act 2005 provides that the provisions of this act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of law other than this Act, that it is in view of this provision of SEZ Act that the Tribunal in the case of **Sujana Metal Products Ltd (supra)** has treated supplies made by a DTA unit to SEZ Developers an export and hence covered by the provisions of sub rule (6) of Rule 6, and that in view of this, the impugned order is not sustainable.

4. Shri Sanjiv Jain the learned DR defended the impugned order by reiterating the findings of Commissioner (Appeals) and pleaded that since sub-rule (6) has been amended only w.e.f. 31.12.08, so as to bring SEZ Developers within in its purview during the period prior to 31.12.08, supplies to SEZ Developers were not covered by sub-rule

(6) of Rule 6 and hence the amount at the rate of 10% of the value of exempted goods has been correctly demanded under Rule 6(3) of the Cenvat Credit Rules.

5. We have considered the submissions made by both sides and perused the record. We find that a Coordinate Bench of the Tribunal in the case of **Sujana Metal Industries** (supra) has considered this very issue in detail and after considering the provisions of SEZ Act has come to the conclusion that during the period prior to amendment of sub-rule (6) of Rule 6 w.e.f. 31.12.06., the supplies to SEZ Developers by a DTA unit were to be treated as export and hence covered by Rule 6(6) of the Cenvat Credit Rules. Since the supplies to SEZ Developers during the period of dispute were to be treated as exports and hence covered by sub-rule (6) of Rule 6, the provisions of sub-rule (1), (2) and (3) of Rule 6 would not be applicable. The impugned order is therefore not sustainable. The same is set aside. The appeal is allowed.

(Pronounced on 23/8/12)

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

MPS*