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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

CUSTOMS APPEAL BRANCH

Appeal No. ST/699 /2008 - CU[DB] Date **19/01/2012**

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

To :
M/S DILEEP INDUSTRIES PVT. LTD.
G-161-164, 171-174, RIICO INDUSTRIAL AREA,
BAGRU (EXT.) BAGRU, JAIPUR.

M/S DILEEP INDUSTRIES PVT. LTD. Appellant

Vs

C.C.E. JAIPUR I Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/A/57/ 2012 CU[DB]** dated 18.01.2012 passed by the Tribunal under **Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax**

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
C.C.E. JAIPUR I
N.C.R.BUILDING, STATUE
CIRCLE, "C" SCHEME, JAIPUR
302005.

2. Adv. / Consult
MR.PANKAJ MALIK, C.A.
207-208, SHREE GOPAL TOWER, KRISHNA MARG,
C-SCHEME, JAIPUR-302001

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
(Customs Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. II

DATE OF HEARING : 12/01/12.

Service Tax Appeal No. 699 of 2008

M/s Dileep Industries (P) Ltd. — Appellant

Versus

CCE, Jaipur – I — Respondent

Appearance

Ms. Sukriti Das, Advocate – for the appellant.

Shri K.P. Singh, Authorized Representative (SDR) – for the Respondent.

CORAM: **Hon'ble Shri D.N. Panda, Judicial Member**
Hon'ble Shri Rakesh Kumar, Technical Member

Final Order No. ST/A/57/12-cu Dated : 12.1.12

ORDER

Per. D.N. Panda :-

Learned Counsel says reading of show cause notice (appearing at page 39 of the appeal folder) categorically brings charge that unutilised Cenvat credit shall not be refundable. Against this allegation, she submits that exporters are permitted to get refund of Cenvat credit remained unutilised. This is mandate of Rule 5 of Cenvat Credit Rules, 2004. Therefore, the authorities below committed an error denying refund. She relies for her contention on the judgment of **CCE vs. Drish Shoes Ltd.** reported in **2010 (254) E.L.T. 417 (H.P.)**.

2. Learned representative for Revenue says that when the goods manufactured were exempted, the Cenvat credit is not admissible to the appellant.

3. Heard both sides and perused the records.

4. It is noticed that Cenvat credit through different modes have been earned by the appellant which is apparent from the show cause notice dated 22/2/08. That fact remained undisputed. Mandate of Rule 5 of Cenvat Credit Rules, 2004, grants refund of unutilised Cenvat credit. Therefore it is difficult to agree with the authorities below to deny the refund as we are guided by the decision of Hon'ble High Court of Himachal Pradesh in the case of **CCE vs. Drish Shoes Ltd.** (supra). Consequently, the appellant succeeds and appeal is allowed.

(Dictated and pronounced in open court)

(D.N. Panda)
Judicial Member

(Rakesh Kumar)
Technical Member

PK