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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/384 /2006 - EX[DB] Date **26/06/2012**

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

To :
MARUDHAR AGRICO., RANI (RAJ)
36/37, INDUSTRIAL ESTATE, RANI (RAJ)

MARUDHAR AGRICO., RANI (RAJ) Appellant

Vs

CCE,JAIPUR-II Respondent

I am directed to transmit herewith a certified copy of **Final order No.** A/722 **2012** **EX[DB]** dated 25-6-2012 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
CCE,JAIPUR-II
NCE BUILDING, STATUE CIRCLE,
JAIPUR

2. Adv. / Consult
MR.OM P.AGARWAL & CO.
56, SECTION 7, N.P.H ROAD, JODHPUR(RAJ)

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New Delhi
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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:09.05.2012
Date of Decision: 25.06.2012

Hon'ble Mr. Justice Ajit Bharihoke, President
Hon'ble Mr. Rakesh Kumar, Member (Technical)

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/384 of 2006

(Arising out of Order-in-Appeal No.13/HKS/CE/JPR-II/05 dated 5.1.2006 of the Commissioner of Central Excise (Appeals-II), Jaipur).

M/s. Marudhar Agrico ...Appellant

Vs.

CCE, Jaipur-II ...Respondent

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

Appearance: Shri O.P. Agarwal, Chartered Accountant for the appellants.
Shri Sumit Kumar, AR for the respondent.

FINAL Order No. A/722/2012-Ex(BR)

Per Rakesh Kumar:

The appellant manufacture Pickaxe/Shovel/Hoes chargeable to central excise duty under sub-heading 8201.00 of the Central Excise Tariff. They were availing cenvat credit of central excise duty paid on inputs used in or in relation to their final products. These products were dutiable, till the same were fully and un-conditionally exempted from whole of the duty by Notification No.23/04-CE dated 9.7.2004. As on 8.7.2004, the appellant had some inputs in stock and also the inputs in process and contained in the finished products in stock. The finished products in stock as on 8.7.2004 and the finished products manufactured out of the inputs in process were cleared at nil rate of duty after 8.7.2004. Thus, w.e.f. 9.7.2004, finished products manufactured by the appellant became "exempted goods" within the meaning of this term as defined in Rule 2 (d) of the Cenvat Credit Rules, 2002 and cenvat credit, if any, availed on the inputs used in or in relation to manufacture of the final products was no longer admissible in terms of the provisions of Rule 6(1) of the Cenvat Credit Rules 2004. The appellant reversed the cenvat credit in respect of the inputs lying in stock as on 8.7.2004. However, they did not pay amount equal to the cenvat credit involved on the inputs in process and the inputs contained in the final products in stock as on 8.7.2004. The total cenvat credit in respect of the such inputs was Rs.90,483/-. The Department in view of the provisions of Rule 6(1) of Cenvat Credit Rules, 2002, according to which, no cenvat credit is available on the quantity of the inputs used in the manufacture of exempted goods, issued a show cause notice for recovery of the cenvat credit on the inputs in process and inputs contained in the finished products lying in stock as on 8.7.2004. The show cause notice also sought recovery of interest on this amount and imposition of penalty. The show cause notice was adjudicated by the Asstt. Commissioner vide order-in-original no.156/2005 dated 20.10.2005 by which the above mentioned demand was confirmed along with interest and penalty of equal amount was imposed on the appellant under Rule 13 of the Cenvat Credit Rules, 2004 read with Section 11 AC of the Central Excise Act. On appeal to the Commissioner (Appeals), the order of the Asstt. Commissioner was upheld vide order-in-appeal dated 5.1.2006 except for setting aside of the penalty under Rule 13 of the Cenvat Credit Rules. Against this order of the Commissioner (Appeals), this appeal has been filed.

2. Heard both the side.

3. Shri O.P. Agarwal, Chartered Accountant, ld. Counsel for the appellant, pleaded that the issue involved in this case stands decided by the **Larger Bench of the Tribunal in the case of HMT Ltd Vs. CCE reported in 2008 (232)**

ELT 217 (Tribunal –LB), wherein the Tribunal held that when in respect of the certain final products, input duty credit was availed and those final products become fully exempt from duty, the cenvat credit involved on the inputs lying in stock or in process or contained in the final products lying in stock on the date of exemption, is not required to be reversed. He, therefore, pleaded that the impugned order is not sustainable.

4. Shri Sumit Kumar, ld. Departmental Representative defended the impugned order by relying on the judgedment of the Division Bench of the Tribunal in the case of **Ranbaxy Laboratories Ltd. Vs. CCE, Chandigarh reported in 2010 (253) ELT 578 (Tribunal-Delhi)**, wherein the Division Bench relying upon the **Apex Court's judgement in the case of Commissioner of Central Excise Vs. Gujarat Narmada Fertilizers Co. Ltd. reported in 2009 (240) ELT 661 (SC)** held that in such a situation, the cenvat credit would be required to be reversed.

5. We have carefully considered the submissions from both the sides and perused the records.

6. In this case till 8.7.2004, the finished products manufactured by the appellant were dutiable and the appellant were availing cenvat credit of central excise duty paid on the inputs used in or in relation to the manufacture of the final products. The final products became fully exempt from duty by

notification no.23/04-CE dated 9.7.2004. Rule 2 (d) of the Cenvat Credit Rules, 2002 defines exempted goods as the goods which are exempt from whole of the duty leviable thereon and includes the goods which are chargeable to nil rate of duty. Thus, there is no doubt that w.e.f. 9.7.2004, the final product of the appellant became exempted goods. While Rule 3(1) of the Cenvat Credit Rules, 2002 provided for availment of cenvat credit of specified duties by a manufacturer in respect of the inputs or capital goods received in the factory and sub-rule (2) of Rule 3 also provided that notwithstanding anything contained in sub-rule (1), the manufacturer or producer of final products shall be allowed to take cenvat credit of duty on the inputs lying in stock or in process or inputs contained in the final product lying in stock on the date on which the goods cease to be exempted goods, or become excisable goods, Rule 6(1) provided that "cenvat credit shall not be allowed on such quantity of inputs which is used in the manufacture of the exempted goods except in the circumstances mentioned in sub-rule (2). Sub-rule (2) of Rule 6 covers a situation where a common cenvated inputs are used for manufacture of dutiable and exempted final products and this rule gives two options to the manufacturer - either to maintain separate stock and inventory in respect of the inputs used in the manufacture of dutiable and exempted final products and take cenvat credit only in respect of the inputs used in the manufacture of dutiable final products and not take credit in respect of the exempted final product and if he cannot maintain such account, pay an amount as is specified in sub-rule (3) in respect of clearances of exempted final products Thus, the basic principle behind Rule 6 of the Cenvat Credit Rules, 2000 is that cenvat credit would not be available in respect of the inputs used in or in relation to the manufacture of exempted goods. The exempted goods are those which are defined in Rule 2(d) of the Cenvat Credit Rules. Taking into account these provisions of Rule 6, the Apex in the case of **CCE Vs. Gujarat Narmada Fertilizers Co. Ltd. reported in 2009 (240) ELT 661 (SC)**, wherein the point of dispute was as to whether the cenvat credit would be available in respect of the quantity of LSHS which is used for the manufacture of the exempted final products – fertilizers, the Apex Court held that to the extent, the cenvated LSHS was are used in the manufacture of fertilizers (exempted products), cenvat credit would not be available. In this case, para-10 of the judgement is reproduced below:-

> **10. In our view, sub-rule (1) is plenary. It restates a principle, namely, that CENVAT credit for duty paid on inputs used in the manufacture of exempted final products is not allowable. This principle is in-built in the very structure of the CENVAT scheme. Sub-rule (1), therefore, merely highlights that principle. Sub-rule (1) covers all inputs, including fuel, whereas sub-rule (2) refers to non-fuel-inputs. Sub-rule (2) covers a situation where common cenvatted inputs are used in or in relation to manufacture of dutiable final product and exempted final product but the fuel-input is excluded from that sub-rule. However, exclusion of fuel-input vis-a-vis non-fuel-input would still fall in sub-rule (1). As stated above, sub-rule (1) is plenary, hence, it cannot be said that because sub-rule (2) is inapplicable to fuel-input(s), CENVAT credit is**

> **automatically available to such inputs even if they are used in the manufacture of exempted goods. The cumulative reading of sub-rules (1) and (2) makes it abundantly clear that the circumstances specified in sub-rule (2), which *inter alia* requires separate accounting of inputs, are not applicable to the fuel-input(s). However, the said sub-rule (2) nowhere says that the legal effect of sub-rule (1) will stand terminated in respect of fuel-inputs which do not fall in sub-rule (2). In other words, the legal effect of sub-rule (1) has to be applied to all inputs including fuel-inputs, only exception being non-fuel-inputs, for which one has to maintain separate accounts or in its absence pay 8% /10% of the total price of the exempted final products. Therefore, sub-rule (1) shall apply in respect of goods used as "fuel" and on such application, the credit will not be permissible on such quantity of fuel which is used in the manufacture of exempted goods. In our view, the above aspect has not been properly appreciated by the Gujarat High Court in the above case of *M/s. Gujarat Narmada Valley* reported in 2006 (193) E.L.T. 136 (supra).**

7. Following the ratio of the above judgement of the Apex Court, Division Bench of this Tribunal in the case of **Ranbaxy Laboratories Ltd. Vs. CCE, Chandigarh reported in 2010 (253) ELT 578 (Tribunal-Delhi)** has held that when the finished products became fully exempted form duty, the cenvat credit on the inputs in respect of the inputs lying in stock would be required to be reversed.

8. The judgement of Larger Bench in the case of **HMT Ltd. Vs. CCE (supra)** relies upon the Apex Court's judgement in case of **Collector Vs. Dai Ichi Karkaria reported in 1999 (112) ELT 353 (SC).** However, the perusal

of this judgement of the Apex Court would show that the only issue decided in the case is the valuation of the intermediate products, manufactured in a factory and which are captively consumed in the manufacture of final products--whether the cost of the intermediate product on which its assessable value is based, should include the element of excise duties/Additional Customs Duty suffered by the inputs and whose modvat credit has been availed. The duty on an intermediate product consumed captively is required to be paid when either the final product is fully exempt from duty or there is no duty exemption for the intermediate product and thus, this is not the situation whether cenvat credit availed inputs have been used in the manufacture of exempted goods. It is in this context that the Apex Court after discussing Rules 57A, 57C, 57D, 57E, 57F, 57G and 57 I of the Central Excise Rules, 1944 relating to Modvat Scheme, in para 16 & 17 of the judgement observed that the credit taken by a manufacturer validly can be used for payment of duty on the final product, there is no provision for its reversal except when the same has been illegally taken and that the credit so taken is indefeasible. On this basis, the Apex Court after discussing the costing principles, has held that the excise duty whose modvat credit has been validly taken will not form part of the assessable value of the intermediate products. In this judgement, the question whether a manufacturer would be eligible for cenvat credit in respect of inputs lying in stock, which on account of the final products becoming fully exempt from duty have been used in the manufacture of exempted goods, would be available or not was nowhere discussed. Rule 57H(7) in this regard which specifically provided for reversal of modvat credit availed on inputs lying in stock or in process or contained in final products lying in stock, by a manufacturer availing full duty exemption under a notification based on value or quantity of clearances in a financial year, at the time when the manufacturer changes from duty paying statuts to full exemption status, was nowhere discussed, as this was not the question before the Hon'ble Court. In our view, this question has been addressed by the Apex Court only in its judgement in the case of **Gujarat Narmada Fertilizers Corporation (supra)** and it is this judgement which is applicable to this case. The larger bench judgement in case of **HMT Vs. CCE (supra)** is per incuriam,

8. If the appellant's plea is accepted and the judgement of the larger bench in case of **HMT Vs. CCE (supra)** is accepted as correct, it would enable an assessee expecting his product to become fully exempted, as happens in case of assessee availing full duty exemption under a notification based on value or quantity of clearances in a financial year or area based exemption no.49/03-CE, or 50/03-CE, etc., plan his input receipts in such a manner by purchasing inputs far in excess of his requirement during the period when his product is dutiable, that he always has enough cenvat credit so as to be able to pay entire duty through cenvat credit and use the canvat credit availed inputs in the

manufacture of exempted goods without having to reverse the credit when the final product becomes fully exempt from duty. An interpretation which leads to such absurd results cannot be treated as correct interpretation more so when the Apex Court in the case of **CCE Vs. Gujarat Narmada Fertilizers Co. (supra)** has held in clear terms that Rule 6(1) is plenary - it restates a principle that cenvat credit for duty paid on inputs used in the manufacture of exempted final products is not allowable and <u>this principle is inbuilt in the very structure of the CENVAT Scheme.</u>

9. In this case, the cenvat credit availed inputs in process had been used in the manufacture of finished products, which were exempted goods, as the same had been cleared at nil rate of duty under Notification No.23/04-CE. Similarly, the finished goods lying in stock, which also contained the cenvat credit availed inputs having been cleared at nil rate of duty, from 9.7.2004 onwards had become exempted goods. Thus, in this case, the cenvat credit availed inputs in process and inputs contained in the final products lying in stock as on 8.2.04 had been used in the manufacture of exempted goods and, therefore, the provisions of Rule 6(1) would be attracted and the cenvat credit would not be admissible and since the same had been availed and same would be required to be reversed. As discussed above, the judgement of Larger Bench in the case of

HMT Vs. CCE (supra) is of the period prior to the judgement of the Apex Court in the case of **CCE Vs. Gujarat Narmada Fertilizers Co. Ltd.** (supra), in the light of which, the same would be no longer be a good law.

10. In view of the above discussion, we do not find any infirmity in the impugned order. The appeal is dismissed.

[order pronounced in the open court on.....25.../.6/2012

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

ckp.

FAX : 011-26108426

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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

Dated: 20/02/2014

To

Appellant as per address in table below

Respondent as per address in table below

Misc Order No. MO/50613/2014 -EX[DB] dated 14/02/2014

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.

Asstt. Registrar(EXCISE Appeal Branch)

	Application	Appeal	Name and Address of Appellant
1	E/ROM/4975/2012	E/384/2006	**MARUDHAR AGRICO., RANI (RAJ)** 36/37, INDUSTRIAL ESTATE RANI (RAJ)
			Name and Address of Respondent
2			**CCE,JAIPUR-II** NCE BUILDING, STATUE CIRCLE, JAIPUR

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3Advocate(s) / Consultant(s):

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4 Bar Association, CESTAT, Delhi

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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, Satellite Road, Ahmedabad-15

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Asstt. Registrar(EXCISE 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. III

DATE OF HEARING : 14/02/2014.
DATE OF DECISION : 14/02/2014.

Excise ~~Customs~~ ROM Application No. 4975 of 2012 in Appeal No. 384 of 2006

M/s Marudhar Agrico., Rani (Raj.) Appellant

Versus

CCE, Jaipur – II Respondent

Appearance

Shri O.P. Agarwal, Consultant – for the appellant.

Shri Pramod Kumar, Authorized Representative (Jt. CDR) – for the Respondent.

CORAM : **Hon'ble Ms. Archana Wadhwa, Member (Judicial)**
Hon'ble Shri Rakesh Kumar, Member (Technical)

Misc. Order No. 50613/2014 Dated : 14/02/2014

Per. Archana Wadhwa :-

The present ROM application stands filed by the applicant in respect of final order No. A/722/2012-EX (BR) dated 25/06/2012 vide which the applicant's appeal was rejected.

2. After hearing both the sides, we find that the mistake pointed out by the learned Consultant that relates to the fact that whereas the issue involved in the appeal was as to whether the Cenvat credit of duty paid on the inputs used in the semi-

finished, work in progress goods is to be reversed by the appellant or not, the Tribunal has decided the issue as if the same related to the reversal of input credit in respect of inputs contained in the finished goods as also semi-finished goods. Learned Consultant clarifies that the issue in respect of reversal of Cenvat credit of inputs contained in final product was dropped by the original Adjudicating Authority and, as such, was not the subject matter of the appeal. He prays for rectifying the order to that extent. Learned Consultant also submits that the Tribunal has wrongly followed the Hon'ble Supreme Court decision in the case of **CCE vs. Gujarat Narmada Fertilizers Co. Ltd.** reported in **2009 (240) E.L.T. 661 (S.C.)** and has wrongly held that the Larger Bench decision in the case of **HMT Ltd. vs. CCE** reported in **2008 (232) E.L.T. 217 (Tribunal – LB)** was not applicable. He submits that in the case of **CCE vs. Gujarat Narmada Fertilizers Co. Ltd.** (supra), the issue was entirely different, whereas the issue involved in the present appeal was fully covered by the Larger Bench decision of the Tribunal in the case of **HMT Ltd. vs. CCE** (supra).

3. Learned Jt. CDR appearing for the Revenue agrees to the first mistake pointed out by the appellant, but submits that the second mistake is not apparent from the records in as much as the same is judicial view of the Tribunal Bench.

4. After appreciating the submissions made by both the sides, we hold that the said final order of the Tribunal relate to the only

semi-finished goods lying in the stock on the date of final product becoming exempt w.e.f. 09/07/2004. In as much as the credit relatable to inputs contained in the final product lying in stock on the said date has already been dropped by the Assistant Commissioner and there being no appeal by the Revenue, we hold that wherever the Tribunal order has referred to the "finished goods," the said expression would read as "semi-finished goods."

5. As regards the second objection, we fully agree with the learned Jt. CDR that the Tribunal while passing the said order has already considered the Larger Bench decision of the Tribunal in the case of **HMT Ltd. vs. CCE** (supra) and has held that in view of the law declared by the Hon'ble Supreme Court in the case of **CCE vs. Gujarat Narmada Fertilizers Co. Ltd.** (supra), the said decision of the Larger Bench in **HMT Ltd. vs. CCE** (supra) would no longer be a good law. Learned Consultant is again reiterating the same very point before us with his prayer to follow **HMT Ltd. vs. CCE** (supra) and to allow the appeal. It is well settled law that review of the order cannot be done under the guise of rectification of mistake. It has been the subject matter of various decisions of the higher Courts and stands repeatedly laid down that the mistake which is only apparent from the records, can be rectified. A final decision, which stands arrived at, after a long drawn process of arguments of both the sides, cannot be held to be a mistake, requiring any rectification. Though it is a settled law, but we may at this point refer to the Hon'ble Supreme Court decision in the case of **Deva Metal Powders**

Pvt. Ltd. vs. Commissioner, Trade Tax, U.P. reported in **2008 (221) E.L.T. 16 (S.C.)**, laying down that a decision on a debatable point of law or fact or failure to apply a law to a set of facts which remains to be investigated, cannot be corrected by way of rectification.

6. In view of the foregoing, we partly allow the rectification of mistake only to the extent of use of the expression finished goods in the said order, instead of semi-finished goods. The same is, however, rejected in respect of the other mistake pointed out by the learned Consultant, which relates to the merits of the case. ROM is disposed of in the above manner.

(Dictated and pronounced in open court)

(Archana Wadhwa)
Member (Judicial)

(Rakesh Kumar)
Member (Technical)

PK