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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

STAY Application No. : E/Stay/661/2010
Appeal No. : E/648/2010-EX[DB]

Dated: **09/07/2012**

Assistant Registrar
C.E.S.T.A.T. New Delhi
To,
BALLARPUR INDUSTRIES LTD.
YAMUNA NAGAR, HARYANA.

BALLARPUR INDUSTRIES LTD. (Appellant)

VS

C.C.E. PANCHKULA (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **A/788/2012-EX[DB]** , Stay **SO/1048/2012** dated **03/07/2012** 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. PANCHKULA
SCO No. 407 and 408, Sector 8,
Panchkula (Haryana) 134119.

2. Advocate(s) / Consultant(s):
V. Laxmikumaran
5,Jangpura Extension,Link Road,New
Delhi-110014

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

12. Office Copy

13. Gaurd File

Assistant Registrar
EXCISE Appeal Branch

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

Date of Hearing/Decision :3.7.2012.

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 Stay Application No.661 of 2010
In Excise Appeal No.E/648 of 2010

(Arising out of Order-in-Original NO.23-59/ADC/AKG/PKL/2010-11 dated 30.11.2010 passed by the Addl. Commissioner (Appeals), Central Excise, Panchkula).

M/s. Ballarpur Industries Ltd. ...Appellant

Vs.

CCE, Panchkula ...Respondents

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

Coram : Hon'ble Justice Shri Ajit Bharihoke, President
Hon'ble Shri Rakesh Kumar, Member (Technical)
STAY order no. 1048/2012 – Ex (BR)
FINAL Order No. A/.788./.2012.-Ex (BR)

Per Justice Ajit Bharihoke:

M/s. Ballarpur Industries is engaged in the manufacture of paper and paper board of different varieties falling under Chapter 84 of the Schedule to the Central Excise Tariff Act, 1985.

2. The appellant during the period in question have been sending paper reels for cutting to job worker which service is subject to levy of service tax and service tax was paid in respect of the job work done by the job worker.

3. The issue involved in the present appeal is whether or not the appellant is entitled to benefit of cenvat credit in respect of the service tax paid in relation to the paper cuttings done by the job worker. The matter was taken up today for hearing on stay application. However, after hearing the parties, we are of the view that appeal itself can be disposed of today. Accordingly, we, after waiving the condition of pre-deposit, proceed to hear the appeal.

4. Ld. Counsel for the appellant submits that cenvat credit has been disallowed vide impugned order for the reason that the appellant due to

inadvertence could not bring to the notice of the adjudicating authority that he had actually been adding the amount paid for the job work to the value of the goods cleared for the purpose of excise duty and the excise duty has been paid after value addition. In support of this contention, ld. Counsel for the appellant has drawn our attention to the copy of the order-in-original no.23-59/ADC/AKG/PKL/2010 dated 30.11.2010 wherein the jurisdictional Addl. Commissioner has recorded in para 1.4, 1.5 and 3.1 of the said order that the reels are cleared to cutting centre (job worker) after payment of duty and after those reels converted into cut paper sheets, those sheets are transferred to the depots without payment of duty and from the depot, those cut sheets are cleared on payment of excise duty after including the cutting charges received by the job worker in the transaction value. Ld. Counsel submits that in view of the aforesaid observations of the Addl. Commissioner concerned, it is obvious that the appellant has been paying excise duty on the valuation including job work charges on which service tax has been paid and as such, the appellant is entitled to avail cenvat credit in respect of the service charges.

5. Shri R.K. Verma, ld. Authorised Departmental Representative for the department has fairly conceded that in view of the observation of the Addl. Commissioner, Central Excise in the order-in-original the appellant would be entitled to cenvat credit in respect of the service tax paid on the job work

charges. Ld. DR, however, submits that observation of the Addl. Commissioner in the aforesaid order by itself does not amount to prove of the fact that the excise duty paid on the final product is based upon the transaction value including job work charges and this fact requires to be looked into. Ld. DR thus submits that it would be appropriate if the matter is remanded back to the concerned adjudicating authority with the direction to decide the matter afresh after allowing the appellant to lead evidence to show that he has actually valued the final products for the purpose of excise duty by including the Job Work Charges in the transaction value.

6. In view of the above, we are of the considered view that relevant factual aspect of the case have not been considered by the Adjudicating Authority. Accordingly, we accept the appeal and set aside the impugned order and remand the matter back to the Adjudicating Authority to decide the matter afresh after giving an opportunity to the appellant to lead evidence in support of their contention. The appeal is disposed of.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

Ckp.