CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-SM

COURT –III

Excise Appeal No.E/53297/2015-EX [SM]

[Arising out of Order-in-Appeal No.335 (SLM) CE/JPR/2015 dated 02.06.2015 passed by the Commissioner (Appeals), Customs & Central Excise, Jaipur]

For approval and signature:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

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?	

M/s.Rallison Electricals Pvt. Ltd. …Appellant

Vs.

C.C.E., Jaipur … Respondent

Present for the Appellant : Shri.R.K.Hasija, Advocate
Present for the Respondent: Smt.Kanu Verma Kumar, D.R.

Coram: HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

Date of Hearing/Decision: 22/03/2016

FINAL ORDER NO. _56388/2016__

PER: S.K. MOHANTY

This appeal is directed against the impugned order dated 02.06.2015 passed by the Commissioner of Customs and Central Excise (Appeals), Jaipur.

2. Brief facts of the case are that the appellant is engaged in manufacture of electrical copper wires & cables falling under Chapter 85 of the Central Excise Act, 1985. The appellant avails cenvat credit of Central Excise duty paid on inputs used in or in relation to manufacture of final product. The period in dispute is from April 2007 to December, 2008. During the disputed period, the appellant had cleared excisable final Products to the SEZ developer without Payment of Central Excise duty. Supply of goods to the SEZ developer was considered by the Central Excise Department as exempted goods and confirmed the impugned demand against the appellant.

3. Shri R.K. Hasija, the ld. Advocate appearing for the appellant submits that excisable goods cleared to a developer of Special Economic Zone was inserted in Rule 6 of the Cenvat Credit Rules 2004 on 31.12.2008 by way of substitution of the said Rule. According to the ld. Advocate, since the SEZ developer was incorporated in the Rule 6 by way of substitution, the same should have retrospective effect and since the appellant had supplied the goods during the period

April 2007 to December, 2008 to the SEZ developers, the benefit provided therein should be applicable to the appellant. To support his above stand, the ld. Advocate has relied on the judgment of Hon'ble Karnataka High Court in the case of Commissioner of C.Ex. & S.T., Bangalore vs. Fosroc Chemicals (India) Pvt. Ltd. reported in 2015 (318) E.L.T. 240 (Kar.), Commissioner vs. Ultra Tech Cement Ltd., reported in 2015 (317) E.L.T. A 200, (2.50) (A.P.) Union of India vs. Steel Authority of India Ltd. reported in 2013 (297) E.L.T. 166 (Chattisgarh) and the decision of this Tribunal in the case of Ultra Tech Cement Ltd., vs. Commissioner of Central Excise, Tirupati reported in 2014 (310) E.L.T. 170 (Tri. – Bang.). and Sujana Metal Products Ltd. vs. Commissioner of Central Excise, Hyderabad reported in 2011 (273) E.L.T. 112 (Tri.-Bang.).

3. On the other hand, Mrs. Kanu Verma Kumar, ld. D.R. appearing for the Revenue – respondent reiterates the findings recorded in the impugned order.

4. I have heard the ld. Counsel for both sides and perused the records.

5. I find that the issue arising out of the present dispute regarding retrospective application of Rule 6 ibid, amended on 31.12.2008 has already been settled by the decisions relied on by the ld. Advocate in the case of Fosroc Chemicals (India) Pvt. Ltd.(supra), wherein the Hon'ble Karnataka High Court has

held that the amendment took place in Rule 6 (6) (i) in 2008 has to be construed as retrospective in nature and the said statutory provision will be extended to the goods cleared to a developer of a special economic zone for their authorised operations.

6. In view of the fact that the issue arising out of the present dispute is no more res-integra, being covered by various decisions of the judicial forums, I do not find any merits in the impugned order and thus, allow the appeal in favour of the appellant.

[Dictated and Pronounced in the Open Court]

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Anita