IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

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

BENCH-SM

COURT –III

Excise Appeal No.E/2098/2010-EX [SM]

[Arising out of Order-in-Appeal No.146/RPR-I/2010 dated 15.04.2010 passed by the Commissioner (Appeals-I), Customs, Central Excise, Raipur]

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?	

C.c.E., Raipur …Appellant

Vs.

Sunil Steels … Respondent

Present for the Appellant : Mr..M.R. Sharma, D.R.
Present for the Respondent: Ms. Priyenka Goel, Advocae
Mr. A.K. Prasad, Advocate

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

Date of Hearing/Decision: 11/11/2016

FINAL ORDER NO. __56497/2016__

PER: S.K. MOHANTY

This appeal is directed against the impugned order dated 15.04.2010 passed by the Commissioner (Appeals), Customs and Central Excise, Raipur. In this case, availment of cenvat credit by the respondent has been disputed by the Department on the ground that the supplier of goods has wrongly determined the value, attributable to suppression, misstatement, collusion etc., and as such, the respondent is not entitled for cenvat credit of the Central Excise Duty paid by the supplier indicated in the supplementary invoice, in terms of Rule 9 (1) (b) of the Cenvat Credit Rules, 2004.

2. Shri M.R. Sharma DR, appearing for the Revenue reiterates the submissions made in the grounds of appeal.

3. On the other hand, Shri A.K. Prasad, ld. Advocate appearing for the respondent submits that pursuant to the audit memo issued by the Jurisdictional Central Excise Authorities, the supplier of sponge iron, had paid the differential duty and raised the supplementary invoice on the respondent, based on which the cenvat credit was taken. He further, submits that since the differential amount of duty was not paid pursuant to any show cause notice involving fraud, collusion, suppression, with intent to evade payment of duty etc., embargo created in Rule 9 (1) (b) ibid will not be applicable for denial of the cenvat credit.

4. Heard both sides and perused the records. Rule 3 ibid is the enabling provision, which entitles manufacturers of final products to take cenvat credit of various duties and taxes paid on the inputs/capital goods. The requirement under the said Rule is that the goods have been received by the manufacturer

in the factory. Since receipt of goods and its utilization for the intended purpose, have not been disputed by the Department, cenvat credit taken in terms of Rule 3 cannot be denied to the respondent. Further, since the amount in question was not paid by the supplier of goods pursuant to any show cause notice alleging suppression, collusion, misstatement of facts, and the amount being paid pursuant to the audit query, in my considered opinion, the rigor of Rule 9 (1) B ibid shall not be applicable for recovery of the Cenvat Credit taken by the respondent. Therefore, I do not find any infirmity in the impugned order passed by the ld. Commissioner (Appeals), and hence dismiss the appeal filed by Revenue.

[Dictated and pronounced in the Open Court]

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Anita