CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

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

BENCH-SM

COURT –IV

Excise Appeal No.E/1116/2006/ EX. [SM]

[Arising out of Order-in-Appeal No.IND-I/510/2005 dated 28.12.2005 passed by the Commissioner (Appeals-I), Customs & Central Excise, Indore].

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., Indore …Appellant

Vs.

Kriti Industries Ltd. … Respondent

Present for the Appellant : Shri G.R. Singh, DR
Present for the Respondent: Shri A. Upadhya, Advocate

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

Date of Hearing/Decision: 29.05.2015

Final ORDER NO. 54413/2015

PER: S.K. MOHANTY

Revenue is in appeal against the impugned order dated 28th December, 2005 passed by the Commissioner (Appeals), Customs and Central Excise, Indore.

2. Brief facts of the case are that the appellant is engaged in the manufacture of final products namely, plastic pipes and accessories. During the disputed period, the appellant availed cenvat credit on various inputs, used in the manufacture of the said final products. The pipes manufactured by the appellant are leviable to central excise duty, and are also exempted from payment of duty, subject to conditions in terms of Notification No.3/04-CE dated 8th January, 2004. In other words, as the pipes manufactured by the appellant are both dutiable, as well as, exempted, and cenvat credit is availed on common inputs, the provisions of Rule 6 of the Cenvat Credit Rules, 2004 are attracted. In terms of Rule 6 (3) (b) of the CCR, the appellant had discharged the duty liability in respect of exempted pipes cleared from the factory, by depositing 8% of the value of the exempted goods. Payment of this 8% amount was objected to by the Central Excise Department on the ground that value for the purpose of payment of amount under Rule 6 (3) (b) of the Cenvat Credit Rules, should not only be confined to assessable value, but also include other elements such as freight and other taxes/charges. The matter was adjudicated by the Dy. Commissioner of Central Excise vide order dated 21.10.2005, wherein duty demand of Rs.4,07,699/- was confirmed on the

appellant and also equal amount of penalty was imposed under Section 11AC of the Act. Feeling aggrieved by the said adjudication order, the present respondent preferred appeal before the Commissioner (Appeals), which was disposed of vide the impugned order in favour of the respondent. Hence, this present appeal is filed by Revenue before this Tribunal.

3. The short question involved in this appeal for consideration is, as to whether, the value for the purpose of Rule 6 (3) (b) of the Cenvat Credit Rules, 2004 should be confined to the assessable value, or should also include the freight and other expenses incurred by the respondent up to delivery of goods at the depot, from where the same are sold to the ultimate customer.

4. The incidence for levy of Central Excise duty is manufacture or production of excisable goods, in terms of Section 3 of the Central Excise Act, 1944. For administrative convenience, the place of removal has been extended to the factory gate for the purpose of payment of Central Excise duty. Duty on excisable goods is payable by the manufacturer-assessee at the time and place of removal i.e. the factory gate, on the assessable value, which includes all expenses incurred in respect of the said goods, till the time of their removal. The assessable value would exclude any duty and tax, that are payable on the goods and the freight charges incurred for transportation up to the place of destination. In this case, the charges incurred by the respondent towards freight and other

taxes, for delivering the goods at the customer's end, are not forming part of assessable value, for payment of amount in terms of Rule 6 (3) (b) of the Cenvat Credit Rules 2004. Accordingly, after analyzing the position of Cenvat Credit Rules, the Commissioner (Appeals) has allowed the appeal in favour of the respondent herein.

5. Hence, I do not find any infirmity in the impugned order. Accordingly, the appeal filed by the Revenue-appellant is dismissed.

(Dictated and pronounced in the open Court)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Anita