IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. III

Excise Appeal No. E/2847/2006-Ex[DB]

[Arising out of Order-In-Appeal No. 191(MPM)CE/JPR-I/2006 dated 31.05.2006 passed by CCE Jaipur-I]

For approval and signature:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon'ble Mr. B. Ravichandran, 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?	

C.C.E. Jaipur-I ...Appellant

Vs.

M/s. Dalas Biotech Ltd. …Respondent

Appearance:
Ms. Neha Garg DR for the Appellant
Ms. Rinki Arora, (Advocate) for the Respondent

CORAM:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon'ble Mr. B. Ravichandran, Member (Technical)

Date of Hearing/ Decision.18.02.2016

Final Order No. 56521 /2016

Per S. K. Mohanty:

Revenue is in appeal against the impugned order dated 29.05.2006 passed by the Commissioner (Appeals-I), Customs and Central Excise, Jaipur. The grievance of Revenue is that the respondent is required to reverse the cenvat credit in terms of Rule 4(5) of the Cenvat Credit Rules, 2004, in respect of the nonreceipted quantity of the inputs from the job worker's premises. Further, the Revenue has also stated that based on the letter dated 11.03.2003 of the Respondent, since the Ld. Commissioner(Appeals) has dropped the demand, the same is not proper and justified inasmuch as the said letter was not produced by the Respondent during the course of adjudication proceedings.

2. We have heard the Ld. Counsel for both the sides and perused the records.

3. We find that the Commissioner (Appeals) has set aside the Adjudication order on the ground that Rule 4(5) of the Cenvat Credit Rules, 2002 does not require return of the waste and scrap from the job workers premises. The Commissioner (Appeals) also took the view that non-entering of particulars in challan or in job work register is a procedural infraction, for which the benefit of Cenvat cannot be denied. However, we find from the available records that the letter dated 11.03.2003, wherein the Respondent had explained the generation of waste was not produced before the Original Authority at the time of Adjudication Proceedings. The said fact is evident from the letter itself, where there is no acknowledgement by the Department regarding receipt of such letter. Further, we find that the test report based on which the Commissioner (Appeals) has arrived at the conclusion regarding generation of the waste was also available before the Original Authority. Thus, we are of the view that principle of natural justice in this case has been violated inasmuch as the Commissioner (Appeals) has decided the case solely based on the

documents without giving the opportunity to the Revenue-Respondent to properly put forth their case before the Commissioner (Appeals).

4. Therefore, in the interest of justice, we remand the matter back to the original authority for a fresh fact finding on the additional documents submitted by the Respondent before the Commissioner (Appeals). Needless to say, the Respondent herein should be given opportunity of hearing before disposal of the case. The appeal is disposed of in above terms.

(Dictated and pronounced in the open court)

(**B. Ravichandran**)
Member(Technical)

(**S. K. Mohanty**)
Member (Judicial)

Neha