IN THE CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI

Appeal No. E/1117 to 1119/09

(Arising out Order-in- Appeal No. SB/27 to 29/TH.II/09 dated 07.08.2009 passed by the Commissioner of Central Excise (A), Mumbai)

For approval and signature:
Hon'ble Shri Ramesh Nair, Member (Judicial)
Hon'ble Shri Raju, 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?	No
2.	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
3.	Whether Their Lordships wish to see the fair copy of the Order?	Seen
4.	Whether Order is to be circulated to the Departmental authorities?	Yes

United Rubber Industries (India) P. Ltd. Appellant
Biravu Navin Rai
Sailen Kumar Jana

Vs.

CCE, Thane III Respondent

Appearance:

Shri Vinay Sejpal, Advocate for the appellant
Shri D.S. Chavan, Supdt. (AR) for the respondent

CORAM:
Hon'ble Shri Ramesh Nair, Member (Judicial)
Hon'ble Shri Raju, Member (Technical)

Date of hearing : 22.03.2018
Date of decision : 25.05.2018

O R D E R No: A/**86556-86558/2018**

Per: Raju

This appeal has been filed by United Rubber Industries (India) P. Ltd. against demand of duty and imposition of penalties.

2. The appellants are manufacturers of rubber products for automobile industry. The appellants were availing cenvat credit under rule 16 of Cenvat Credit Rules in respect of material rejected by their buyers which was brought back into the factory. The entire issue before us is if the said goods were disposed of in terms of Rule 16 or not. The appellants have claimed that they were processing the return material and sending back approx 85% of the goods on payment of duty. The appellants have produced some computerised statement in respect of their claim which has been made subsequently. When the case was detected by the revenue they were not maintaining any such record. The statement recorded when the case was booked by revenue indicate that they were not reprocessing the goods as the same were not in repairable condition. The said goods were being cut and scrapped. In this regard, revenue has relied on the statement of Ajith Kumar T.V. Nair, GM Production recorded on 17.2.2004, statement of Dr. Sushant K. Maity, GM (R&D) on 17.2.2004, statement of Sailen Kumar Jana, Authorised signatory recorded on

17.2.2004. In the statement of Biravu Navin Rai, CEO recorded on 28.02.2004 he stated that what needs to be done on the goods received back was decided by Ajith Kumar T.V. Nair, Bhojraj Shetty, Asst. GM Production and Sudarshan Raj Kodialbail. He admitted that no separate records for rejected goods were maintained. However, entries were made in RG23A part I and simultaneously the goods were shown as issued. He admitted that no record was maintained even on computer and no issue slips were prepared in respect of such goods. He admitted that no records were maintained about repair and reclearance in terms of Rule 16 of the Central Excise Rules.

3. After these statements, statement of Vinay Dusane, GM (Material) was recorded on 22.04.2004 wherein he admitted that he had prepared a detail statement of rejected goods repaired and sent back. He admitted that proper correlation of rejected quantity rejected and quantity returned back was not available. Statement of Sailen Kumar Jana was recorded on 22.04.2004. He admitted that no rejection memo were from the parties were received. He further stated that the statement was made in consultation with Biravu Navin Rai and he was told to write the reasons against each entry. He admitted that they did not have any personal knowledge for the reasons recorded in the said statement. He admitted that no records regarding such rejected goods are maintained. He also admitted that he

prepared the statement based on clearances shown in invoices. He stated that he had prepared the statement by selecting the invoice of clearance of the same part description/part clearance as appearing in the document of rejected goods received by them. Later on statement of Biravu Navin Rai was recorded on 24.06.2004 where he stated that the statement was prepared based on his knowledge and memory. All his dictation was not based on any records. He admitted that the statement was prepared by taking into account the data on which the rejected goods were received and the clearance made of similar goods in the near proximity. Statement of Bhojraj Shetty was recorded on 08.07.2004 wherein he categorically confirmed that daily production report does not include any repair or rejected goods. Similar admission was made by Sudarshan Raj Kodialbail, Manager (Production) in his statement dated 08.7.2004.

4. Ld. Counsel for the appellants has asserted that just because no separate record was maintained for the processes done on the rejected material credit cannot be denied. He pointed out that no records are prescribed under Rule 16. He pointed out the statement prepared by them should be accepted. He argued that most of the repair work was in the nature of reprinting of marking, clamp refitting and removal of grease/ recleaning.

5. Ld. Authorised representative relies on the impugned order. He argued that from the statement of various people employees of the appellant and also CEO it is apparent that no processing on the rejected goods received by them was done. He relied on the statement of Ajith Kumar T.V. Nair, GM Production recorded on 17.2.2004, statement of Dr. Sushant K. Maity, GM (R&D) on 17.2.2004, statement of Sailen Kumar Jana recorded on 17.2.2004 all admitted that the goods cannot be repaired and were only cut and scrap. He argued that the CEO tried to introduce the computerised statement without any back up record and the same should be rejected. He also relies on the statement of Sudarshan Raj recorded on 08.07.2004 and Bhojraj Shetty recorded on 08.07.2004, wherein they have confirmed the daily production report does not include repair or rejected goods.

6. We have gone through the rival submission. We find that the appellants were receiving goods rejected by their buyer and they were availing credit. The appellants have not maintained any record to show that the goods were processed and cleared on payment of duty after repairs. After the case was booked, the appellants have created a table on the basis of the memory as dictated by the CEO. The same cannot be admitted as any evidence. We also find that the CEO has stated that what needs to be done on the goods is decided by Ajith Kumar T.V. Nair, Bhojraj Shetty and Sudarshan Raj. In his statement Ajith Kumar T.V. Nair

stated that the goods received are not in repairable condition and have to be cut and scrap. The other two in their statement dated 8.4.2007 have admitted that the daily production report did not include any repair or rejected goods. In these circumstances, it would appear that the appellants have not been able to establish that the goods on which credit was taken were processed and cleared on payment of duty. In these circumstances, the appeal cannot succeed and is dismissed.

7. As far as Biravu Navin Rai is concerned, it is noticed that he had tried to fabricate and introduce a chart as evidence in the proceedings. It is obvious that he was fully aware of the issue and therefore, his liability to penalty cannot be set aside. Appeal of Biravu Navin Rai is also dismissed.

(Pronounced in Court on ....)

(Ramesh Nair)
Member (Judicial)

(Raju)
Member (Technical)

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