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Whether the Cenvat Credit is available on the strength of Xerox Copy of Bill of Entry?

Dear Professional Colleague,

We are sharing with you an important judgement of Hon'ble CESTAT-Mumbai in the case of **Commissioner of Central Excise, Kolhapur Versus Shah Precicast (P) Ltd. [AIT-2012-292-CESTAT]** on the issue:

Issue:

Whether the Cenvat Credit is available on the strength of Xerox Copy of Bill of Entry?

Facts:

In the present case, during the course of scrutiny of the records of M/s Shah Precicast (P) Ltd. (Respondent), it was found that they had taken Cenvat credit on the strength of the Xerox copy of the bill of entry. Therefore, the Revenue issued a show-cause notice for wrong availment of Cenvat credit on the strength of Xerox copy of bill of entry and proposing penalty for suppression of facts with an intention to evade duty. The same was adjudicated, demand was confirmed and penalty was imposed. Against that order, an appeal was filed by the respondent before the Commissioner (Appeals) who set aside the adjudication order and allowed the appeal. Aggrieved from the said order, revenue filed an appeal before the CESTAT-Mumbai.

The contention of the Revenue is that as per the provisions of Rule 9(1)(c) of the CENVAT Credit Rules, 2004, Xerox copy is not a proper document to avail CENVAT credit. Therefore, impugned order is to be set aside.

On the other hand, the respondent submitted that as the original copy of the bill of entry was not available with them, they lodged a police complaint and undertook to produce as and when the original copy would be available with them. Further, they made efforts to obtain certified copy of the Bill of entry from the office of the Commissioner of Customs, Goa who denied their request. It is admitted that the goods have been received by the respondent, they have paid the duty on them and they have been used in the manufacture of the final product. Therefore, on the technical ground, credit should not be denied. The respondents have relied on the following cases in support of their contention:

- ***CCE v. Vikrant Tyres [2005 STT 189 (CESTAT)]***
- ***Bombay Goods Transport Association v. UOI [1995 (77) E.L.T. 521 (Bombay HC DB)]***

Held:

It was held that the respondents are entitled for Cenvat credit availed by them on the strength of Xerox copy of the Bill of entry. The Hon'ble CESTAT observed that the respondents have made efforts to obtain certified copy of the bill of entry which was also denied to them. Further it is not disputed that the goods have suffered duty and they have

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been used in the manufacture of final product. Hence, the CESTAT concluded that substantial benefit cannot be denied on the basis of mere technical violation and rejected the appeal of the Revenue and decided the case in favor of the respondent.

Hope the information will assist you in your Professional endeavours. In case of any query/information, please do not hesitate to write back to us.

Thanks & Best Regards.

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