

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066  
EXCISE APPEAL BRANCH

Appeal No. E/2536/2004

Date 21/08/2007

Assistant Registrar  
C.E.S.T.A.T, New Delhi


To :  
M/S BHARAT HEAVY ELECTRICALS LTD.  
PIPLANI BHOPAL  
462023

M/S BHARAT HEAVY ELECTRICALS LTD.

C.C.E BHOPAL

Appellant  
Vs  
Respondent

I am directed to transmit herewith a certified copy of Final order No. *453/07-Ex.* dated *23-7-07* passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944

  
Assistant Registrar  
(Excise Appeal Branch)

Copy to :

1. Respondent

C.C.E BHOPAL

HOSHANGABAD ROAD, 48, ADMINISTRATIVE  
AREA, AREA HILLS, BHOPAL (M.P.) 462011

2. Adv. / Consult

MR.Z. U. ALVI

~~B-82~~ BDA COLONY, ADJACENT GARUDA TRAVELS. KOH-E-FIZA BHOPAL-01

3. S.D.R.

~~4. J.C.D.R.~~

5. Bar association, CESTAT, New Delhi

6. M/s. Deeparchi Publications, M-93, marg. 43, saket, New

7. M/s Centax Publications (P) Ltd., 1512-E, Bhishm Pitamah

8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301

9. R. Venkatraman Constt. 44-B, S.Suncity, Ghaziabad -

10. Nidheshak publications, I.P.Estate, new Delhi

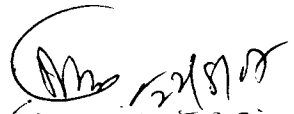
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh,

12. Co, Law Institution

13. TAX INDIA, B-XI/8183, Vasant Kunj, New Delhi - 110070

14. Office Copy

15. Guard file

  
(MOHINDER SINGH)  
Assistant Registrar  
(Excise Appeal Branch)

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**  
**West Block No.2, R.K.Puram, New Delhi-110066.**  
**Principal Bench, New Delhi.**

**E/APPEAL No.2536/04**

[Arising out of Order-in-Appeal No.124-CE/BPL/2004 dt.17.3.04 passed by the Commissioner(Appeals), Bhopal)

For approval and signature:

Hon'ble Mr. C.N.B.NAIR, MEMBER TECHNICAL  
Hon'ble Mr. P.K.DAS, 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 would 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 : Department Authorities:

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M/s. Bharat Heavy Electricals Ltd.

Appellant

Versus

CCE, Bhopal

Respondent

Appearance

Sh. Z.U.Alvi, Adv. For Appellant

Sh. Sanjay Kumar, Authorised Representative(DR) For Respondent

Coram: Hon'ble Mr. C.N.B.NAIR, MEMBER TECHNICAL  
Hon'ble Mr. P.K.DAS, MEMBER JUDICIAL

*Final* Date of decision: 23.7.07  
Order No. 453/07EX

Per P.K.Das:

Heard both sides and perused the records. Ld. Advocate on behalf of the applicant submits that a SCN was issued proposing to disallow the Modvat credit on various grounds. He submits that the appellant contested the demand of duty as well as they debited the same amount through PLA during the pendency of the proceedings. This Tribunal vide order dt.5.2.99 allowed the appeal of the appellant. Accordingly, the appellant again credited the same amount in their PLA. In the impugned adjudication order, it is contended that the appellant should have filed a refund application. Ld. Advocate submits that they have debited the amount through PLA during the pendency of the proceedings and after final order of the Tribunal, they have again credited the same amount. Therefore, there is no requirement for filing of the refund claim.

2. Ld. DR reiterates the findings of the Commissioner(Appeals). He submits that in this case, there is a requirement to verify the issue namely admissibility of refund and unjust enrichment. He also relied upon the decision of the Tribunal in the case of J.K. Synthetics vs CCE reported in 1996(87)ELT.389(Tri.).

3. After hearing both sides and on perusal of the records, we find that it is a case of re-credit of duty debited during proceeding. The Tribunal by its order dt.5.2.99 decided the issue on merits. There is no dispute that they are entitled to credit the said amount in PLA after final order of this Tribunal.

Therefore, Ld. DR relied upon the decision of the J.K.Synthetics Ltd. wherein Modvat credit originally taken subsequently recovered by the appellant and therefore, the Tribunal held that refund is more appropriate than taking credit originally taken. In the present case, there is no allegation that the appellant recovered the same amount from any person. So, the contention of the Ld. DR that principle of unjust enrichment is applicable <sup>is not</sup> unsustainable. At any ~~rate~~, the appellant is entitled to credit this account in their account and therefore, filing of the refund claim at this stage is wholly unnecessary. Accordingly, the impugned order is set aside. The appeal is allowed with consequential relief.

Order dictated in the open Court.

(C.N.B.Nair)  
Member Technical

(P.K.Das)  
Member Judicial

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