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

Appeal No. E/515 /2008 WITH E/S/496/2008 Date 30/04/2008

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

To :
M/S MOREPEN LABORATORIES LTD.

MOREPEN VILLAGE,
NALAGARH ROAD,
BADDI (HP)
DISTT. SOLAN

M/S MOREPEN LABORATORIES LTD. Appellant

Vs

C.C.E. CHANDIGARH STAY ORDER NO. 419/08-EX. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 219/08 **Excise** dated 17-4-08

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. CHANDIGARH

C.R. BUILDING, PLOT NO. 19, SECTOR 17-C, CHANDIGARH 160017

2. Adv. / Consult SH. S. K. MALPANI, ADV.
C/o. APPELLANT

3. ~~S~~.D.R.
4. ~~J.C.D.R.~~
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017
7. M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12. Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai 60017
13. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO. 2, R.K. PURAM,
NEW DELHI
<u>COURT – II</u>

<u>E/STAY No. 496/2008 IN &</u>
<u>EXCISE APPEAL NO. 515 OF 2008</u>

[Arising out of Order-in-Appeal No. 707/CE/CHD/2007 dated 12.12.2007 passed by the Commissioner (Appeals), Central Excise, Chandigarh]

For approval and signature:

Hon'ble Mr. S.S. Kang, Vice President,
Hon'ble Mr. Rakesh Kumar, 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 would 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?	[illegible]
4.	Whether order is to be circulated to the Departmental authorities?	No

M/s. Morepen Laboratories Ltd., Appellants

Vs.

CCE, Chandigarh Respondent

Appearance:
Shri S.K. Malpani, Advocate for the appellants,
Shri V.K. Agarwal Departmental Representative, for the respondent

Coram:
Hon'ble Mr. S.S. Kang, Vice President,
Hon'ble Mr. Rakesh Kumar, Member (Technical)

Date of Hearing: 17th April, 2008

FINAL ORDER NO. 219/08-EX dated ________

STAY ORDER NO 419/08-EX

Per S.S. Kang:

Heard both sides.

2. Applicants filed this application for waiver of pre-deposit of duty of Rs. 15,29,218/- and penalty of equal amount. Demand was confirmed on the ground that the applicants started availing benefit of exemption notification w.e.f. 1.2.2006 starting clearance of goods without payment of duty. Revenue issued show cause notice for recovery of credit taken in respect of goods lying in stock and contained in the finished products as on the date when applicants started availing the benefit of notification.

3. Contention of the appellants is that Larger Bench of the Tribunal in the case of CCE vs. Ashok Iron and Steel Fabricator, reported in 2002 (140) ELT 277 (T) has held that credit in balance is not liable to be reversed. Contention is that in view of the above decision demand is not sustainable. Applicants also pleaded financial hardship.

4. Contention of Revenue is that as per provisions of Rule 6 of CENVAT Credit Rules, manufacturers have to reverse credit in respect of inputs in stock and contained in the finished products. Contention of the revenue is that the Tribunal in the case of Albert David Ltd. vs. CCE, Meerut, reported in 2003 (151) ELT 443 (Tri.-Del.) has held that

input credit is recoverable in respect of inputs lying in stock when final product becomes exempt from payment of duty. Appeal filed against above decision of the Tribunal was dismissed by the Hon'ble Supreme Court, as reported in 2005 (157) ELT A81.

5. We find that in this case the applicants started clearing finished goods without payment of duty. Hence, applicants are liable to reverse the credit in respect of inputs lying in stock and contained in finished goods in view of the decision of the Apex Court. However, in view of the financial hardship, applicants are directed to deposit 50% of the duty within a period of 8 weeks. On deposit of the above directed amount, recovery of balance amount of duty and penalty is waived.

6. We find that the Commissioner (Appeals) dismissed the appeal for non-compliance to the provisions of Section 35F of the Central Excise Act as the appellants failed to comply the condition of the stay order passed by the Commissioner (Appeals). As we directed the appellants to deposit 50% of the duty amount, impugned order is set aside and the matter is remanded back to the Commissioner (Appeals) to decide the same on merit after affording reasonable opportunity of hearing to the appellants and on showing the deposit of above amount. Appeal is disposed of by way of remand.

(Dictated & pronounced in the Open Court.)

(S.S. KANG)
VICE PRESIDENT

(RAKESH KUMAR)
MEMBER (TECHNICAL)

Dated 21st April, 2008
RK