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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/4418/2004 Date 01/07/2008

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

To :
M/S ELOFIC INDS. LTD.
14/4, MATHURA ROAD, FARIDABAD
121003

M/S ELOFIC INDS. LTD. Appellant
Vs
C.C.E. DELHI-IV, FARIDABAD Respondent

I am directed to transmit herewith a certified copy of **Final order** No.389/2008 Excise dated 13-6-08
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. DELHI-IV, FARIDABAD
NEW CGO COMPLEX, FARIDABAD
2. Adv. / Consult SH. K.L. HONDA, CONT.
HOUSE NO. 689, SECTOR-16,
FARIDABAD-121002
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 AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. III

Excise Appeal Nos. 4418 of 2004

[Arising out of Order-in-Appeal No. 39/CE/APPL/Div V/DLH-IV/FBD/04 dated 31.5.2004 passed by Commissioner (Appeals) Central Excise, Faridabad.]

For approval and signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)
Hon'ble Mr. P.K. Das, Member (Judicial)

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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

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M/s. Elofic Industries Ltd. Appellant

Vs.

Commissioner of Central Excise Faridabad Respondent

Appearance: Mr. K.L. Handa, Consultant for the Appellant
Mr. V. Choudhary, Jt. CDR for the Respondent

CORAM: Hon'ble Mr. M. Veeraiyan, Member (Technical)
Hon'ble Mr. P.K.Das, Member (Judicial)

Date of decision : 13.6.2008

FINAL **ORDER NO.** 389 / 08-EX

Per M. Veeraiyan (for the Bench):

This is an appeal against the order of the Commissioner (Appeals) dated 31.5.04.

2. Heard both sides.

3. The relevant facts, in brief, are as follows:-

a) During March, 1999 and April, 1999, the appellant has taken modvat credit amounting to Rs.11,88,706/- without producing the duplicate copies of invoices which are the relevant documents based on which modvat credit was to be availed.

b) In addition, they also availed a credit amounting to Rs.2,54,311/- on the strength of challans issued under Rule 57F(4) but failed to produce duplicate copies of challans.

c) The original authority confirmed the demand of duty of Rs. 14,43,017/- which has been upheld by the Commissioner (Appeals).

4. Learned advocate for the appellant submitted that there was a fire in their factory on the intervening night of 1st and 2nd May, 1999, in which records and documents as well as of finished goods were burnt and lost. The Commissioner granted remission of duty on the goods destroyed in fire. The duplicate copies of the invoices and duplicate copies of challans could not be produced as there among the records

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materials in question have been received and utilised in the manufacture of final products.

5. Learned DR submits that the matter relates to the 1999 and the Commissioner (Appeals) has clearly held that no evidence of receipt and utilisation of inputs in the manufacture of final products has been furnished by the appellants.

6. We have carefully considered the submissions from both sides. It is not in dispute that there was fire in the factory premises of the appellants on the intervening night of 1st and 2nd May, 1999, in which records and documents as well as of finished goods were burnt. It is also seen that the Commissioner has granted remission of duty on the goods destroyed in fire. Under these circumstances, the explanation given by the appellant that the duplicate copies of invoices and challans were destroyed seems plausible and hence acceptable. In such a situation, outright rejection of the benefit of modvat credit is not correct. We feel that if there is other evidence indicating the receipt and utilisation of the inputs, then the credit should be allowed. The appellant, in the proceedings so far, has been mainly harping on legal submissions before the original authority and Commissioner (Appeals) and has not chosen to produce other documents, for e.g. payment to the supplier of raw material which can corroborate receipt and utilisation of inputs. Now, they are pleading for an opportunity to produce other evidence to show that the materials in question have been received and utilised in the manufacture of final products. In the interest of justice, we feel that they should be given another opportunity. Therefore, we set aside the order of the Commissioner

evidence within two months from the receipt of this order and thereafter, the adjudicating authority shall decide within one month from the date of expiry of time limit prescribed for producing evidence and after giving reasonable opportunity of hearing to the appellant.

7. The appeal is allowed by way of remand on the above terms.

(Dictated in the open Court)

(M. Veeraiyan)
Member(Technical)

(P.K.Das)
Member(Judicial)

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