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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 4479/2004 & 4481-4482/04 Date 23/07/2008

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

To
M/S BHARAT HEAVY ELECTRICALS LTD.
KHALIAR, P.O. BHEL, JHANSI (U.P.)
284129

M/S BHARAT HEAVY ELECTRICALS LTD. Appellant
Vs
C.C.E. KANPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No** 506-508/2008- **Excise** dated 18-7-08

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. KANPUR
117/7, SARVODYA NAGAR, KANPUR
2. Adv. / Consult
~~MR SHRI LAJJARAM~~ SH. Z.U. ALVI, ADV.,
D/3 B.D.A. COLONY,
BHOPAL
3. CDR.
4. ~~JCDR.~~
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 600017
13. Taxindiaonline com Pvt Ltd, B-XI 8183,Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(Excise Appeal Branch)

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

Court No.III

Date of hearing: 08.7.2008
Date of pronouncement: 22-7.2008

Central Excise Appeal Nos.4479 & 4481-4482 of 2004

Arising out of the Order in appeal No.159/CE/Appl/KNP/04 dated 16.3.04; 207/CE/Appl/KNP/04 dated 31.3.04 and 153/CE/Appl/KNP/04 dated 27.3.04 passed by the Commissioner (Appeals), Customs & Central Excise, Kanpur , (UP).

For Approval and Signature:

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. M. Veeraiyan, Member (Technical)

1	Whether Press Reporter 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 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

Appellants | Respondent

M/s Bharat Heavy Electricals Ltd. vs. C.C.E., Kanpur

Appearance:

Shri Z.U. Alvi, Advocate for the appellant(s) and
Shri M.M. Singh, Authorized Departmental Representative (DR) for the Revenue

Coram: Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. M. Veeraiyan, Member (Technical)

Final Order No. 506-508/2008-Ex

Per Archana Wadhwa:

The appellants are engaged in the manufacture of transformers and parts thereof and were availing modvat credit during the period under dispute in respect of inputs as also capital goods.

2. A part of the credit stands denied to them on the ground that the input sent to job workers were received after the period of 180 days. In some cases, though the inputs were received within a period of 180 days, the credit was availed after the said period. Learned Advocate has submitted that the credit in respect of processed inputs received from job workers are governed by the provisions of Rule 57J, as held by the Tribunal in the case of SRF Ltd. vs. CCE., Trichy – 2003 (89) ECC 451 (Tri.), in which case, there is no limitation of six months. To the similar effect is another decision of the Tribunal in the case of Polyplex Corporation Ltd. vs. C.C.E., Meerut – 1999 (111) ELT 370 (Tri.). As such, submits the learned Advocate that inasmuch as the goods were admittedly received back from the job workers, there is no justification for denial of credit.

3. Further, a part of the credit stands denied to them in respect of inputs on the ground that modvat declaration under Rule 57J subsequent to the receipt of the goods was not filed at all. We find that provisions of sub-rule (11) of Rule 57G are to the effect that substantive benefit of modvat credit should not be denied on procedural ground if the authorities are otherwise satisfied about the duty paid character and receipt of the inputs in the assessee's factory and the utilization of the same in the manufacture of final product. To the same effect is the Board's Circular No.441/99-CX, dated 23.2.1999 and the Larger Bench of the Tribunal in the case of Kamakshya

Steels reported in 2000 (121) ELT 247 (Tri-LB). As such, we are of the view that denial of credit on this ground itself was not just, subject to the verification of the other factors.

4. Further, a part of the credit was denied in respect of the capital goods on the ground that the specific heading under which they were classifiable were not specified under Rule 57Q. On the other hand, it is the appellant's contention that the credit was so availed in respect of said capital goods as part and spares of the main machine, which were admittedly capital goods in view of the definition of the same under Rule 57Q. Such spares are eligible for modvat credit irrespective of their chapter headings as held by the Tribunal in the case of C.C.E., Patna vs. Bihar Caustic & Chemicals Ltd. – 2000 (118) ELT 196 (Tri.); Dwarikesh Sugar Industries Ltd. vs. C.C.E., Meerut II – 2007 (220) ELT 938 (Tri- Del.); C.C.E., Bhubaneswar I vs. Ispat Alloys Ltd. – 2001 (130) ELT 903 (Tri-Kolkata) and Tube Investments of India Ltd. vs. C.C.E., Chennai – 2001 (130) ELT 699 (Tri-Chennai).

5. A part of the credit stands denied on the ground that same has been taken by the assessee on his own on account of reduction of prices of the goods, without taking recourse to the refund procedure. It is the appellant's contention that the assessments were still provisional and they were entitled to take refund which were available to them.

6. We find that the issues are more or less covered by the various judgments, as referred above. Accordingly, we set aide the impugned orders and remand the matter to the original adjudicating authority for fresh adjudication after verification of the other relevant factors and in the light of

the Tribunal's judgments referred (supra). The appeals are allowed by way of remand.

(Pronounced in the open Court on 22. .7.2008)

18/9/08

(Archana Wadhwa)
Member (Judicial)

(M. Veeraiyan)
Member (Technical)

scd/