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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/2525/2007 Date 23/07/2008

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

To
M/S SUBHASH UDYOG
PLOT NO. D-SPECIAL INDL. AREA, 22 GODOWN,
JAIPUR (RAJASTHAN)
M/S SUBHASH UDYOG Appellant
Vs
C.C.E. JAIPUR I Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 505/2008- **Excise** dated 11-4-08

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. JAIPUR I
   N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.
2. Adv. / Consult
   MR.ALOK KOTHARI
   A-92, MANISH MARG, NEMI NAGAR, GANDHI PATH, VAISHALI NAGAR, JAIPUR
3. C.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 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)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI

COURT – II

EXCISE APPEAL No. 2525 OF 2007

[Arising out of Order-in-Appeal No. 160 & 161/GRM/CE/JPR-I/2007 dated 7.6.2007 passed by the Commissioner (Appeals), Customs & Central Excise, Jaipur]

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?	
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 Departmental authorities?	

M/s. Subhash Udyog — Appellants

Vs.

CCE, Jaipur — Respondent

Appearance:

Shri Alok Kothari, Advocate for the appellants,
Shri Sanjay Kumar, Departmental Representative, for the respondent

Coram:

Hon'ble Mr. S.S. Kang, Vice President,
Hon'ble Mr. Rakesh Kumar, Member (Techncial)

Date of Hearing: 10th April, 2008

FINAL ORDER NO. 505/2008-Ex dated ________

Per S.S. Kang:

Heard both sides.

2. Appellants filed this appeal against the impugned order whereby abatement claimed ~~filed~~ by the appellants in respect of Rajasthan Sales Tax was disallowed and ordered to be added to the assessable value of the goods on the ground that the appellants were entitled for abatement only to net amount of sales tax paid by them and not in respect of exemption/rebate in respect of sales tax.

3. Contention of the appellants is that in Rajasthan assessee is entitled for set off in respect of sales tax paid on the goods purchased by him and there is no exemption or rebate in respect of sales tax during the relevant period. The appellants relied upon the assessment order passed by the sale tax authorities wherein set off in respect of sales tax paid on the raw material was allowed. The appellants also relied upon the Board's Circular No. 2/94-Cx dated 11.1.94 and 671/62/2002 dated 9.10.2002 whereby it has been clarified that set-off scheme of sales tax does not change the rate of sales tax payable/chargeable on the finished goods, and the set-off is not to be taken into account for calculating the amount of sales tax permissible as abatement for arriving at the assessable value u/s. 4 of the Central Excise Act. Contention is that, in view of the above

circular quantum of set-off which was in respect of sales tax cannot be added to the assessable value of the goods.

4. Revenue's contention is that, as the appellants had not paid the actual amount of sales tax regarding which they claimed abatement, therefore, only the net amount of sales tax after deducting set-off amount is admissible for abatement from the assessable value of the goods. Revenue also relied upon the decision of the Tribunal in the case of Andhra Oxygen Pvt. Ltd. Vs. CCE, Vishakhapatnam, reported in 2003 (156) ELT 283 (Tri.-Kolkata).

5. We find that in the case of Andhra Oxygen Pvt. Ltd. (supra) relied upon by the Revenue the assessee was collecting sales tax from their buyers but not paying to the ~~department~~ Govt as the same was exempted. In such a situation Tribunal held that abatement in respect of sales tax is not available to the manufacturer. Facts of the present case are different. In the present case revenue is only allowing abatement to the net amount of sales tax paid by the appellants and not taking into consideration of the amount of set off. Contention of the appellants is that under Rajasthan Sales Tax Act the assessee is entitled for set-off in respect of sales tax paid on purchase of raw material. We find that the Board has clarified in the circulars relied upon by the appellants that amount of sales tax will be permissible as deduction under Section 4 of the Act as is equal to the amount legally permissible under the local sales tax laws to be charged/billed from the customer/buyer. Board clarified that set-off

scheme of sales tax does not change the rate of sales tax payable/chargeable on the finished goods, the set-off is not to be taken into account for calculating the amount of sales tax permissible as abatement for arriving at the assessable value. In view of the above Board's circulars we find that demand is not sustainable, hence, set aside and the appeal is allowed.

(Dictated & pronounced in the Open Court.)

(S.S. KANG)
VICE PRESIDENT

(RAKESH KUMAR)
MEMBER (TECHNICAL)

Dated 11th April, 2008

RK