TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

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

Appeal No. E/2143/2006,3136/06 & 1093/07 Date 23/07/2008

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

To :
M/S SITA SINGH & SONS PVT LTD.
13/4, MATHURA ROAD, FARIDABAD, HARAYANA

2. M/S. PARAS MOTOR INDUSTRIES,
1 KM SHAHPUR ROAD,
SIKRI MATHURA ROAD, FARIDABAD

M/S SITA SINGH & SONS PVT LTD. Appellant

Vs

C.C.E. DELHI IV Respondent

I am directed to transmit herewith a certified copy of **Final order No.**498-500/2008- **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. DELHI IV
   NEW CGO COMPLEX, NH-IV, FARIDABAD, HARYANA 121001.
2. Adv. / Consult
   MR.V. LAXMIKUMARAN
   B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029
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)

**CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST BLOCK-II, R.K. PURAM, PRINCIPAL BENCH, NEW DELHI,
COURT NO. III**

Excise Appeal No. 2143 of 2006
[Arising out of Order-in-Original No. 42/KKJ/Adj./2005-06 dated 30.3.2006 passed by the Commissioner, Central Excise, Delhi-IV]

Excise Appeal No. 3136 of 2006
[Arising out of Order-in-Original No. 07/KKJ/Adj/2006-07 dated 29.5.2006 passed by the Commissioner of Central Excise (Appeals), Faridabad]

Excise Appeal No. 1093 of 2007
[Arising out of Order-in-Original No. 01-02/KKJ/Adjn/2007 dated 31.1.2007 dated 29.5.2006 passed by the Commissioner, Central Excise, Delhi-IV]

Date of hearing/ decision: 16.07.2008

Hon'ble Ms. Archana Wadhwa, Member [Judicial]
Hon'ble Mr. M. Veeraiyan, Member [Technical]

M. Veeraiyan

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

M/s Sita Singh & Sons Pvt. Limited ...Appellants
M/s Paras Motor Industries Limited

[Rep. by Mr. Ravi Raghavan, Advocate]

Vs.

CCE, Delhi-IV ...Respondent

[Rep. by Mr. H.K. Thakur, Jt. CDR]

FINAL ORDER 498 - 500 / 08-EX

Per: M. Veeraiyan:

1.1 Excise appeal No. 2143 of 2006 is by M/s Sita Singh & Sons Pvt. Limited involving a demand of duty of Rs. 1,49,80,000/- (along with interest) relating to the period January 2005 to December 2005 and a penalty of Rs. 1,49,80,000/-.

M. Veeraiyan

1.2. Excise appeal No. 3136 of 2006 is by M/s Sita Singh & Sons Pvt. Limited involving a demand of duty of Rs. 1,80,70,000/- (along with interest) relating to the period April 2003 to December 2004 and a penalty of Rs. 1,80,70,000/-.

1.3. Excise appeal No. 1093 of 2007 is by M/s Paras Motor Industries Limited involving demands of duties of Rs. 38,40,000/- & Rs.59,00,000/- (Total Rs. 97,40,000/- relating to the period January 2005 to October 2005 & November 2005 to February 2006) and a penalty of Rs. 50,00,000/-.

1.4 A common issue is involved in all these appeals and, therefore, they are being dealt with by a common order.

2. Heard both sides.

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

a) The appellants are fabricating bus bodies on duty paid chassis received from the manufacturers of chassis.

b) While clearing the chassis, manufacturers of chassiss have paid the applicable duty including Rs. 10,000/- additional basic excise duty leviable on chassis imposed in the Budget of 2003.

c) The appellants received the duty paid chassis and taken cenvat credit of duty paid on chassis which was @ 16% + Rs. 10,000/- per chassis along with Education cess; they also took credit of duty paid on other inputs such as MS and GI Sheets, Paint, MS Pipes etc.

d) The appellants, after body building, cleared the body built vehicles discharging duty on the entire value of the said body built vehicle including the value of chassis.

4. Commissioner has held that the appellants have taken and utilized inadmissible credit in contravention of the provisions of Rule 3 of Cenvat Credit Rules, 2004; they should not have taken the credit; they should have availed the benefit of Notification No. 6/2002 dated 01.03.2002; accordingly he confirmed the demands of, as mentioned above, under Rule 14 of Cenvat Credit Rules, 2004

read with Section 11A of Central Excise Act, 1944; he ordered recovery of interests on the confirmed demands of duties. He also imposed penalties.

5. Both sides agreed that identical issue has been decided by the Tribunal in the case of HMM Coaches Limited vs. CCE, Panchkula by final order No. 480-481/08-EX dated 26.6.2008 in Excise Appeal Nos. 2914 & 1002 of 2007. The relevant portion of the order are reproduced below:-

> 7.1. We have carefully considered the submissions from both sides. When chassis was cleared as such by the chassis-builder, required duty of excise has been paid. The appellant, as a body building unit, has taken credit of duty paid on the chassis; they have also taken credit of duty paid on other inputs. Body built vehicle has been cleared on payment of applicable rate of duty and on the entire value of the vehicle i.e. on value inclusive of value of chassis. In other words, benefit of Notification No. 6/2002 dated 01.03.2002 has not been availed by them.
>
> 7.2. The submissions that Notification No. 6/2002 being conditional granting only partial exemption cannot be forced on them is valid. ....
>
> 7.4. The ultimate cause of the dispute is that the chassis has suffered additional basic excise duty and credit was taken and the said credit was utilized for paying body built vehicle but there was no additional basic excise duty on the body built vehicle. The appellant has saved Rs. 10,000/- by not availing Notification No. 6/2002. This is basically a consequence of extra duty on the chassis alone.
>
> 8.1. When Section 5A (1A) does not compel the appellant to avail the exemption notification like 6/2002, it cannot be forced on them by interpreting cenvat credit rules as suggested by the Department.
>
> 8.2. The relevant portion of Rule 3 of the Cenvat Credit Rules as follows:
>
> "RULE 3. CENVAT credit –(1) A manufacturer or producer of final products or a provider of taxable service shall be allowed to take credit (hereinafter referred to as the CENVAT credit) of-
>
> -- -- -- -- --
>
> (i) any input or capital goods received in the factory of manufacturer of final product or premises of the provider of output service on or after the 10th day of September, 2004; and
>
> ---- -- -- -- --- --
>
> including the said duties, or tax, or cess paid on any input or input service, as the case may be, used in the manufacture of intermediate products,
>
> -- -- -- -- --
>
> (7) Notwithstanding anything contained in sub-rule (1) and sub-rule (4).

M. Veerayya

-- -- -- -- --

Explanation- While the provisions of any other rule or notification provide for grant of whole or part exemption on condition of non-availability of credit of duty paid on any input or capital goods, or of service tax paid on input service, the provisions of such other rule or notification shall prevail other then provisions of these rules".

8.3. Rule 3 provides for credit of specified duty paid on 'any inputs' subject to the condition mentioned therein. Viewed in the totality of the context, the term 'any inputs' shall mean 'all inputs'.

8.4. Normally an exemption notification stands independently of the input credit relief scheme. Whenever an exemption is granted subject to the condition that the assessee does not avail cenvat credit, then the assessee should not allowed to take recourse to the provisions of rule 3 of Cenvat Credit Rules and avail credit as well. This is will lead to availing double benefits. A benefit of lower rate of duty on condition that the credit was not taken and also the benefit of cenvat under Rule 3. The provisions of rule 3 (7) aims at denying such double benefits. When credit is to be denied it has to be credit on 'any inputs' which in the context would mean credit on 'all inputs'.

8.5. The notification 6/2002 bars credit of duty paid only on chassis. The interpretation of explanation to Rule 3(7) has the effect of denying the credit on all inputs. If there was no bar on taking credit on chassis as a condition in the notification, then the Rule 3(7) would not be applicable. The interpretation of explanation to rule 3 (7) should not lead to a situation of introducing additional condition in the notification i.e. they shall not take credit on 'any inputs'(i.e. all inputs) or forcing them opt for other wise an optional notification. We are of the view that Rule 3(7) has to be applied only in cases where the exemption notification is on the condition that no input credit on any of the inputs is available".

9. Following the ratio of above decision, these appeals are also allowed with consequential relief.

[Operative part of the order pronounced in the open Court].

18/7/08

[Archana Wadhwa]
Member [Judicial]

[M. Veeraiyan]
Member [Technical]

[Pant]