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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 4414 2004 Date 23/07/2008

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

To
C.C.E. GHAZIABAD

CGO COMPLEX-II, KAMLA NEHRU NAGAR,
GHAZIABAD
C.C.E. GHAZIABAD Appellant

Vs

M/S SHATABDI CHEMICALS (P) LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 497 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

M/S SHATABDI CHEMICALS (P) LTD.

E-16. UDYOG KUNJ INDUSTRIAL AREA NH-24. HAPUR BYPASS ROAD. GHAZIABAD
2. Adv. / Consult

NONE

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 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-II, R.K. PURAM, PRINCIPAL BENCH, NEW DELHI, COURT NO. III

Excise Appeal No. 4414 of 2004

[Arising out of Order-in-Appeal No. 66-CE/GZB/2004 dated 31.05.2004 passed by the Commissioner (Appeals), Central Excise, Ghaziabad]

Date of hearing/decision: 11.07.2008

Hon'ble Mrs. 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

CCE, Ghaziabad ...Appellant
[Rep. by Mr. M. M. Singh, DR]

Vs.

M/s Shatabdi Chemicals (P) Limited ...Respondent
[None]

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

FINAL ORDER 487/08-EX

Per: M. Veeraiyan:

This is an appeal by the Department against the order of the Commissioner (Appeals) No. 66-CE/GZB/2004 dated 31.05.2004.

2. None appears for the respondent. Heard the learned DR.

M Veeraiyan

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

(a) The respondent defaulted in payment of duty for the months of April 2001, October 2001 and November 2001.

(b) Accordingly, original authority by an order dated 01.02.2002 directed the assessee to pay the outstanding amount of Rs. 2,90,286/- along with interest and also withdrew the facility to pay the duty through cenvat and directed the payment of duty from account current on a consignment to consignment basis.

(c) The Deputy Commissioner, Division-III, Ghaziabad issued a letter dated 14.05.2002 wherein he acknowledged deposit of outstanding duty and interest in pursuance of order dated 01.02.2002 and permitted taking recredit of Rs. 107870/-.

(d) The Department noticed that for the months of April 2002 and May 2002 the assessee utilized the cenvat account and paid Rs. 9,50,291/- as excise duty. The original authority by his order dated 21.11.2003 held that utilization of cenvat credit during the months of April 2002 and May 2002 was contrary to the earlier order dated 01.02.2002 and confirmed demand of duty amounting to Rs.9,50,291/-

(e) Commissioner (Appeals) vide his impugned order set-aside the order of the original authority. Hence, the Department is in appeal.

5. Learned DR reiterated the grounds of appeal.

6. We have carefully considered the submissions and perused the records. The basic dispute is whether the cenvat account could have been used for payment of duty for the months of April 2002 and May 2002. The letter dated 14.05.2002 by the Deputy Commissioner clearly acknowledges that the dues as per the order of original authority dated 01.02.2002 has been paid. Commissioner (Appeals) allowed the appeal with the following observations:-

> "I find force in the appellant's submission. The Deputy Commissioner vide his letter dated 14.05.2002 has held that nothing is outstanding against the appellant relating to this case and also directed them to take re-credit of Rs. 1,07,870/- in their Cenvat credit account. Moreover, in the show cause notice dated 7.4.2003, the deposit of Rs.1,07,870/- against Rs. 2,90,286/- has not been disputed by the Assistant Commissioner. The said letter of Deputy Commissioner has not been withdrawn by the department. Accordingly, the show cause notice dated 7.4.2003 issued by the

MVeeraye

jurisdictional Assistant Commissioner is contrary to the directions contained in the letter dated 14.5.2002 issued by the jurisdictional Deputy commissioner, therefore, bad in law. Hence, order passed by the Joint Commissioner is not maintainable".

7. The department is not disputing the facts as recorded by the Commissioner (Appeals). Therefore, we do not find any infirmity in the order of the Commissioner (Appeals). The appeal filed by the Department is, therefore, rejected.

[Operative portion of the order was pronounced in the open Court].

18/7/08

[Archana Wadhwa]
Member [Judicial]

[M. Veeraiyan]
Member [Technical]

[Pant]