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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/4814/2004 Date 16/07/2008

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

To
M/S INTERNATIONAL TRACTORS LTD.
VILL. CHAK GUJRAN, HOSHIARPUR
M/S INTERNATIONAL TRACTORS LTD. Appellant
Vs
C.C.E. JALANDHAR Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 469/2008- **Excise** dated 14-7-08

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. JALANDHAR
   (HQ AT CHANDIGARH) PLOT NO 19, SEC 17-C, CHANDIGARH
2. Adv. / Consult
   MR JOY KUMAR
   FLAT NO 261/1,SEC 45-A,CHANDIGARH.
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 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 No.2, R.K.Puram, New Delhi-110066

Court No.III

Date of hearing: 14.7.2008

Central Excise Appeal No.4014 of 2004

Arising out of the order in appeal No.373-75/CE/CHD/JAL/04 dated 27.8.04 passed by the Commissioner (Appeals), Central Excise, Jalandhar.

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 International Tractors Ltd. vs. C.C.E., Jalandhar

Appearance:

Shri Joy Kumar, Advocate for the appellant(s) and
Shri C.S. Rajput, 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. 469/08-EX

Per Archana Wadhwa:

After hearing both the sides duly represented by Shri Joy Kumar, learned Advocate appearing for the appellant and Shri C.S.Rajput, learned DR appearing for the Revenue, we find that modvat credit stands denied to the appellants on two grounds. The first is that they have availed the same even in respect of goods which were short-supplied by their suppliers and in respect of which credit notes were issued to them subsequently. The said demand of modvat credit of Rs.2,19,006/- does not stand disputed by the learned Advocate appearing for the appellant but submits that such short-receipt of goods came to their notice subsequently and they have reversed the said credit and is not disputing the same. Learned DR submits that such reversal was done by the assessee on being pointed out by the Revenue, which calls for imposition of penalty upon them.

In view of the above, we confirm the demand of duty of Rs.2,19,006/-. Inasmuch as, admittedly, the said reversal was made by the appellant on the intervention by the Revenue, we impose the penalty of Rs.20,000/- on them for the said lapse.

2. The credit of around Rs.6.25 lakhs stands denied to the appellant on the ground that though the duty was paid by the suppliers on the goods inclusive of full packing of boxes, the fact remains that the same were actually delivered in pallets and the appellants have been given the credit notes in respect of deletion allowance. On the other hand, it is the appellant's contention that no refund of duty paid has been claimed by the suppliers of the goods and irrespective of the fact that the value of the goods has gone down on account of packing, ~~and~~ they have availed the credit of actual duty paid

by the supplier. It is well settled that ~~though~~ the credit of "duty paid" is available and not the credit of duty payable.'

3. We fully agree with the above contention of the learned Advocate. Admittedly, the duty paid at the supplier 's end stands availed as credit by the assessee and the supplier has not sought reassessment at their end. The assessable value on account of packing cannot be varied ~~denied~~ at the end of receiver of the goods. As such, we do not find any justification for denying the modvat credit on above count. We accordingly, set aside the confirmation to the above extent and imposition of penalty except to the extent of Rs.20,000/-. The appeal is disposed of in above terms.

(The operative part of the order was pronounced in the open Court)

(Archana Wadhwa) 14/7/08
Member (Judicial)

(M. Veeraiyan) 14/7/08
Member (Technical)

scd/