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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/2866/2007 Date 14/07/2008

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

To :
C.C.E. JAMMU
OB-32, RAIL HEAD COMPLEX, JAMMU - 180012.

C.C.E. JAMMU Appellant
Vs
M/S NEW INDIA WIRE & CABLE INDUSTRIES Respondent

I am directed to transmit herewith a certified copy of **Final order No. 450 2008 Excise** dated 11-7-08

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 NEW INDIA WIRE & CABLE INDUSTRIES
   GANGYAL, JAMMU.
2. Adv. / Consult
   MR M M Bali Consultant 98-B Lane No. 10 Greater Kailash, P.O Sanik Colony ,JAMMU
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 AND SERVICE TAX APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI, COURT NO.III

EXCISE APPEAL NO. 2866 OF 2007

Date of Hearing: 10.7.2008
Date of Decision: 10.7.2008

[Arising out of Order-in-Appeal No.183/CE/Appl/Jal/2007 dated 29.6.2007 passed by the Commissioner of Central Excise (Appeals), Jalanddhar Chandigarh(Hqrs. at Chandigarh]

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

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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

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CCE, Jammu — Appellant
[Rep. by: Shri C.S. Rajput, DR]

Versus

New India Wire & Cables — Respondent
[Rep.by : Shri K.K. Anand, Advocate]

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

FINAL **ORDER** 450/08-EX.

Per Archana Wadhwa:

Being aggrieved by the order passed by the Commissioner (Appeals) Revenue has filed the present appeal.

2. After hearing both the sides we find that in terms of Notification No.56/2002, the respondent, who is located in Jammu was required to pay duty by first exhausting their modvat credit available and then through their PLA. The duty paid in cash through PLA was available as refund to the assessee. It so happened that during the particular period duty was paid by the respondent by cash, without first exhausting the cenvat credit. This, according to the assessee, happened on account of being not aware of the provisions of the notification. The refund of duty paid in cash was originally rejected by the original adjudicating authority but on appeal, allowed by the Commissioner (Appeals). The said order of the Appellate Authority is impugned before us.

3. For better appreciation of the reasoning adopted by the Commissioner (Appeals) we reproduce the relevant paragraph :-

> "In the present instance the purpose of the policy of the Govt. is to refund the duty paid in cash and merely not following one of the condition does not debar the appellants from the benefit. Moreover, when the appellants have exhausted the Cenvat credit in subsequent months. To quote a few instances, I observe that during the months of May,05, Dec.,06, January, 07 and March 07 the balance with the Cenvat account was NIL and during the Months of February 05 the balance was Rs.102/-, March 06 it was Rs.4030/-, April 06 it was Rs.6885/-,July 06 it was Rs.180/- only. This shows that the appellants had exhausted the Cenvat balance at some point or other if not in the respective months for which they filed the refund claims. However, mandatory condition of the notification i.e. the manufacturer first utilizes whole of the Cenvat Credit available to him on the last date of the month shall be fulfilled invariably for the claim of refund of cash duty paid for that month. But keeping in view, the appellants' applying for the benefit of notification No.56/2002-CE dated 14/11/2002 in the month of February, 2005 and their case being finalized in the month of October, 2006 (w.e.f. 25/01/2005) i.e. after a period of one year and eight months, I take a lenient view towards non fulfilment of condition of the notification by the appellants."

4. As is seen above, the credit which was required to be utilized in the previous months was subsequently utilized by the assessee in the succeeding

months, the entire situation is revenue neutral and the Appellate Authority has rightly held that an interpretation which defeat the purpose of the notification should be avoided. As such, we do not find any infirmity in the view adopted by the Appellate Authority and reject the appeal filed by the Revenue.

[Operative part of the order pronounced in the open Court on 10.7.2008].

11.7.08
[Archana Wadhwa]
Member (Judicial)

11/7/08
[M. Veeraiyan]
Member (Technical)

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