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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/4480/2004 Date 11/07/2008

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

To :
M/S BHARAT HEAVY ELECTRICALS LTD. (BHEL)
P.O. BHEL, JHANSI
284129

M/S BHARAT HEAVY ELECTRICALS LTD. (BHEL) Appellant
Vs
C.C.E. KANPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No. 446/2008-Excise** dated 10-7-08

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. KANPUR
   117/7, SARVADYA NAGAR, KANPUR
2. Adv. / Consult
   SH. Z.U.ALVI,ADV.,
   D-8, B.D.A. COLONY, BHOPAL (MP)
3. 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: 8.7.2008

Central Excise Appeal Nos.4480 of 2004

Arising out of the Order in appeal No.181/CE/Appl/KNP/04 dated 28.3.2004 passed by the Commissioner (Appeals), Customs & Central Excise, Kanpur.

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 Bharat Heavy Electricals Ltd. vs. C.C.E., Kanpur

Appearance:

Shri Z.U. Alvi, Advocate for the appellant(s) and
Shri M.M. Singh, 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. 446/08-EX

Per Archana Wadhwa:

The short issue is involved in the present appeal. The benefit of modvat credit in respect of inputs stands denied to the appellant on the ground that modvat declaration in terms of provisions of Rule 57G was filed subsequent to the receipt of the inputs.

2. After hearing both sides, we find that there is no dispute about the receipt of the inputs, their duty paid character and utilization in the manufacture of the final product. Provisions of sub-rule (13) of Rule 57G are to the effect that where authorities are satisfied about the availability of modvat credit , the same should not be rejected on the procedural and technical ground. Reliance in this regard is also made to the decision of the Larger Bench of the Tribunal in the case of Kamakhya Steels (P) Ltd. vs. C.C.E., Meerut – 2000 (121) ELT 247; U.P. State Sugar Corporation Ltd. vs. C.C.E., Allahabad – 2001 (137) ELT 1029 and Grasim Cement Ltd. vs. C.C.E. – 1997 (96) ELT 354. As such, we do not find any justifiable reason to uphold the impugned order denying credit. The same is accordingly, set aside and the appeal is allowed with consequential relief to the appellant.

(Pronounced in the open Court)

10/7/08
(Archana Wadhwa)
Member (Judicial)

10/7/08
(M. Veeraiyan)
Member (Technical)