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/4615/2004-4616/2004 Date 08/08/2008

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

To :
M/S HBD PACKAGING PVT LTD
C-40, OKHLA INDL. AREA, PHASE-II, NEW DELHI
110020

M/S HBD PACKAGING PVT LTD Appellant
Vs
C.C.E.N DELHI Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 574-575/08-EX **Excise** dated 19-6-08 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.N DELHI
   ROOM NO 108, CENTRAL REVENUE BUILDING, I.P. ESTATE, NEW DELHI
   110002
2. Adv. / Consult SH. MANISH PANDA, ADV. C/o
   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. Easy Service Tax Online Dot Com Pvt. Ltd. 407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad - 15
15. Office Copy
16. Guard file

P.T.O. 2

Assistant Registrar

(Excise Appeal Branch)

1 MR NEERAJ BHARGAVA,DIRECTOR
C-40, OKHLA INDL. AREA, PHASE-II, NEW DELHI
110020

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO.II

E/Appeal No.4615-16/04-DB(BR)

(Arising out of order in appeal No. 146-147/CE/04 dated 14.6.04 passed by the Commissioner of Central Excise (Appeals), New Delhi)

For approval and signature:

Hon'ble Mr. M. Veeraiyan, Member(Technical)
Hon'ble Mr.P.K. Das, Member(Judicial))

1. Whether Press reporters may be allowed to see the order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?

2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not ?

3. Whether Their Lordships wish to see the fair copy of the Order ?

4. Whether Order is to be circulated to the Departmental authorities?

1.M/s HBD Packaging Pvt Ltd — Appellant
2.Sh Neeraj Bhardgava, Director — (Rep. by Shri Manish Panda, Advocate)

Vs

CCE, Delhi — Respondent
(Rep. by Shri S. Kumar, DR)

Coram: Hon'ble Mr. M. Veeraiyan, Member(Technical)
Hon'ble Mr P.K. Das, Member(Judicial)

Date of Hearing: 19.6.08

FINAL Order No. 574-575/ — /2008-~~SM~~ Ex(BR)

Per P.K. Das:

Both the appeals are arising out of a common order and therefore, the same are being taken up together for disposal.

2. The Appellant No.1 Company is engaged in the manufacture of printed cartons (packing material), labels and leaflets etc. classifiable under Chapter 48 of the Schedule to the Central Excise Tariff Act, 1985. The Appellants were availing concessional rate of duty under Notification No. 12/02-CE dated 1.3.2002 on the clearance of labels. The conditions of the said Notification are that no credit of the duty was paid on inputs or capital goods exclusively used for the manufacture of these goods, has been taken under Rule 3 of Rule 11 of Cenvat Credit Rules, 2002 and the duty is paid in cash or through account current. It has been alleged in the show cause notice that during the visit by the Central Excise officers on 18.12.2002, it was found that the appellants were maintaining two sets of stock register for the raw material i.e. one page for Cenvat raw material and the other for non-cenvat raw material though the raw material of both the categories were stacked together in the same store room. It has further been alleged that at the time of clearance of labels, the appellants paid duty from Cenvat account instead of PLA. The Adjudicating Authority denied the exemption benefit wherein the goods were cleared on payment of duty through Cenvat account. He confirmed the demand of duty of Rs. 2,29,647/- by calculating duty at the rate of 16% Ad-Valorem (i.e. normal rate of duty) and penalty of equal amount alongwith interest. He also imposed a penalty of equal amount of duty under Rule 26 of Central excise Rules, 2002 on Shri Neeraj Bhargava, Director appellant No.2 herein. The Commissioner (Appeals) upheld the Adjudication order.

3. The learned Advocate on behalf of the appellants submits that it is revealed from the record that the Appellant No.2 in his statement before the Central Excise officers stated that they were paying duty at the rate of 4% from PLA but in some cases, inadvertently, they paid from Cenvat account of Rs. 56,000/- approximately. He further submits that both the authorities below erroneously proceeded that the appellants were not maintaining separate records, which are contrary to show cause notice. He relied upon the decision of the Tribunal in the case of Honda Siel Power Products Ltd Vs CCE, Pondicherry reported in 2006 (206) ELT 808 (Tri.Del).

4. The learned DR reiterates the finding of the Commissioner (Appeals). He submits that the appellant had not maintained records and inventories in respect of inputs and capital goods. He further submits that admittedly the appellant had not paid duty in cash or through account current. So, the Adjudicating Authority rightly denied the exemption benefit and demanded duty at the normal rate.

5. After hearing both the sides and on perusal of the record, we find from the show cause notice that the appellants were maintaining input stock register separately for Cenvatable and non-cenvatable account. It appears from the said notice that the result of the physical stock taking revealed that the stock of finished goods and raw materials physically found in the factory premises was tallying with the quantity of the same as reflected in the stock register maintained by them. So, the submission of the learned DR that the appellants had not maintained the record of inventories, is without any substance. On perusal of the impugned order, we find that Shri Sanjay

Bhargava, Manager and authorized signatory of the appellant company, in his statement recorded before the Central Excise officers stated that by mistake in some cases, they paid duty from Cenvat credit account. It was also stated that it occurred inadvertently due to lack of knowledge. The learned Advocate drew the attention of the Bench, the relevant portion of Memo of Appeal wherein it is stated that appellant had sufficient balance both in their PLA and Cenvat account and would have paid from PLA instead of Cenvat account. We find that the appellants had sufficient balance in their PLA and by mistake, they paid duty from Cenvat account. Therefore, there is substantial compliance of the condition of the Notification. The Tribunal in the case of Honda Siel Power Products Ltd (supra) held that the summary of the debits made by the appellant during the relevant period brings out that it is not a case where duty payment was made from prohibited source, but errors were committed while making debits of duty from current account and Cenvat credit. It has further been held that there is no justification for denying the exemption when the errors were made with regard to debits from the two accounts, all which is required is a record of accounts. In the present case, we find that there was sufficient balance in both accounts. It appears that the errors were committed while making debits of duty from account current and cenvat account, exemption benefit cannot be denied.

6. In view of the above discussion and respectfully following the decision of the Tribunal in the case of Honda Siel Power Products Ltd

(supra), we find that the impugned orders are not sustainable. Accordingly, the orders are set aside and the appeals are allowed with consequential relief.

(Order dictated and pronounced in the open Court).

(M. Veeraiyan)
Member(Tech)

(P.K. Das)
Member(Judl)

MPS*