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CUSTOMS. EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
SINGLE MEMBER APPEAL BRANCH

Appeal No. E/156 /2005 Date 04/08/2008

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

To :
C.C.E. LUDHIANA
CENTRAL EXCISE HOUSE, 'F' BLOCK, RISHI NAGAR,
LUDHIANA 141001 (PUNJAB)

C.C.E. LUDHIANA Appellant
Vs
M/S MODI SALES Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 539/08-EX dated 14-7-08

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)
Ex.

Copy to :
1. Respondent
   M/S MODI SALES
   HERO NAGAR, G.T. ROAD, LUDHIANA
2. Adv. / Consult
   NONE
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
16. EASY SERVICE TAX.

Assistant Registrar
(SM Appeal Branch)
Ex

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. II
Excise Appeal No. 156 of 2005

[Arising out of the Order-in-Appeal No. 613/CE/Appl/Ldh/ 2004 dated 14/10/2004 passed by The Commissioner (Appeals), Central Excise, Ludhiana.]

For Approval and signature :
Hon'ble Shri S.S. Kang, Vice President
Hon'ble Shri Rakesh Kumar, Member (Technical)

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 would 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 Department Authorities? :

CCE, Ludhiana — Appellant

Versus

M/s Modi Sales — Respondent

Appearance

Shri B.K. Goyal, Authorized Representative (DR) – for the appellant.

Shri Rupinder Singh, Advocate – for the Respondent.

CORAM:**Hon'ble Shri S.S. Kang, Vice President**
Hon'ble Sh. Rakesh Kumar, Member (Technical)

DATE OF HEARING : 14/07/2008.

Final Order No. 539/08-Ex Dated : ____________

Per. S.S. Kang :-

Heard both sides. The learned Single Bench referred the following question to the Division Bench, whether the Cenvat credit to job worker is available on fuel which is used in the manufacture of dutiable as well as goods cleared to manufacturer to principal manufacturer under exemption notification No. 214/86 dated 25/03/86.

2. We find that this issue is now settled by Hon'ble Madhya Pradesh High Court in the case of **Union of India vs. Flex Chemicals Ltd.** reported in **2007 (216) E.L.T. 359 (M.P.).** The Hon'ble High Court held as under :-

> "15. As per Rule 57C (1) of the Rules no credit on specified duty is allowable on such inputs which is used in the manufacture of final product which is exempt

from the whole of the duty of excise leviable thereon or is chargeable to NIL rate of duty.

16. After hearing learned Counsel for parties and going through the records and legal provisions, we are of the opinion that the Deputy Commissioner, Central Excise, Division Gwalior and the Appellate Tribunal, New Delhi have rightly held that the respondent No. 1 assessee is entitled of Modvat credit facility on the fuel used by them in manufacturing of PET Chips, which are used for manufacture of final products on which duty is payable. Hence, no interference is called for in the impugned order."

3. In the present case, the goods which were cleared by the job worker after processing under Notification No. 214/86-CE, the principal manufacturer is clearing the same on payment of appropriate duty. The provisions of Rule 57C and 57CC of Central Excise Rules and Rules 6 of Cenvat Credit Rules are similarly worded ~~ordered~~ hence in view of the above decision of the Hon'ble Madhya Pradesh High Court, the question referred is answered in favour of the assessee. No

other issue is involved in this appeal, therefore, the appeal filed by the revenue is dismissed.

(Dictated and pronounced in open court)

(S.S. Kang)
Vice President

(Rakesh Kumar)
Member (Technical)

PK