GRAM : 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/4473/2004 Date 28/08/2008

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

To :
M/S PATHICK ENGG. WORKS
3? 19/1, LIBASPUR ROAD, LIBASPUR, DELHI

M/S PATHICK ENGG. WORKS — Appellant

Vs

C.C.E DELHI-I — Respondent

I am directed to transmit herewith a certified copy of **Final order No.**648/08-EX **Excise** dated 8-8-08

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. DELHI-I
   C.R. BUILDING, I.P. ESTATE, NEW DELHI
2. Adv. / Consult
   MR.NAVEEN MULLICK
   B-388, MERA BAGH, NEW DELHI-63.
3. C.D.R.
4. ~~[illegible]~~
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

Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI

COURT – II

EXCISE APPEAL NO. 4473 OF 2004

[Arising out of Order-in-Appeal No. 80-81-CE/DLH/2004 dated 25.04.2004 passed by the Commissioner (Appeals-II), Central Excise, Delhi-I, New Delhi]

For approval and signature:
Hon'ble Mr. S.S. Kang, Vice President,
Hon'ble Mr. 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 Departmental authorities?	

M/s. Pathick Engg. Works — Appellants

Vs.

C.C.E., Delhi-I — Respondent

Appearance:

Shri Naveen Mullik, Advocate for the appellants;
Shri B.S. Suhag, Departmental Representative, for the Revenue,

Coram:

Hon'ble Mr. S.S. Kang, Vice President,
Hon'ble Mr. Rakesh Kumar, Member (Technical)

Date of Hearing: 7st August, 2008

FINAL ORDER NO. 645/08 Ex **dated** _________

Per S.S. Kang:

Heard both sides.

2. Appellants filed this appeal against the impugned order whereby benefit of Modvat Credit was denied on the ground that the appellants availed wrong credit on galvanized steel tube of below 1 mm thickness. The case of the Revenue is that the appellants are engaged in supply of poles to the Department of Telecommunication (DOT) and as per contract poles should be manufactured out of sheets of 2 mm thickness and since the poles supplied to the DOT are manufactured out of sheet of lesser thickness Modvat credit was rightly denied.

3. Contention of the appellant is that inputs are covered under the invoices showing payment of duty and the same amount of duty has been taken as credit. The appellants relied upon the finding of the adjudicating authority that the inputs on which credit has been availed are used in the manufacture of Hamilton poles. The contention is that in case where inputs are used in the manufacture of final product which are cleared on payment of duty credit cannot be denied. The appellants relied upon the decision of the Tribunal in the case of M/s. Gupta Metal Industries vs. CCE vide Final Order No. 982/04 dated 17.09.2004.

4. Contention of the Revenue is that as per contract, entered with the Department of Telecommunication, Hemilton poles which are to be supplied by the appellants were to be made out of sheets of 2 mm thickness and 2.5 mm thickness. Hamilton poles manufactured by the appellants were accepted by the Department of Telecommunication. Poles manufactured by the appellants are manufactured out of sheets of 2 mm thickness whereas the appellants availed credit of duty paid on the sheets of 1.8 mm thickness which is not an input for the manufacture of poles supplied to DOT. Therefore, credit was rightly denied.

5. We find that the adjudicating authority in the adjudication order gave finding of fact that the inputs in question are used in the manufacture of final product which was cleared on payment of duty. Only contention of the Revenue is that requirement of manufacture of Hamilton pole is that the same should be manufactured out of sheet/coil of 2 mm thickness. We find that the Tribunal in the case of Gupta Metal Industries (supra) where credit was denied on the same ground held as under:-

"3. The contention of the Revenue is that the sheets less than 1.8 mm are costlier than the sheets of 2 mm and 2.5 mm and as per the specifications fixed by DOT only sheets of 2 mm and 2.5 mm are required to be used in the manufacture of poles. Therefore, the sheets on which the credit is taken are not capable of being used in the manufacture of poles supplied to the DOT.

4. We find that a manufacturer is entitled to take credit in respect of inputs used in or in relation to the manufacture of final product. The sheets having thickness of 1.6 mm or less are used in the manufacture of poles supplied to the DOT. This fact is admitted in the adjudication order. In this situation, when the inputs are used in the manufacture of final product, the benefit of Modvat credit in respect of such inputs cannot be denied on the ground that these are costlier inputs or are not as per the specification of DOT. The impugned order is set aside and the appeal is allowed."

In view of the above decision which is on the same issue the impugned order is set aside and appeal is allowed.

(Dictated & pronounced in the Open Court.)

(S.S. KANG)
VICE PRESIDENT

(RAKESH KUMAR)
MEMBER (TECHNICAL)

Dated 8th August, 2008
RK