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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/5472/2004 Date 27/08/2008

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

To :
M/S KHEM CHAND CONCRETE SLEEPER PLANT.
LOHTA VARANASI

M/S KHEM CHAND CONCRETE SLEEPER PLANT. Appellant
Vs
C.C.E.ALLAHABAD U.P Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 626/08-EX **Excise** dated 14-8-08

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.ALLAHABAD U.P
   38 M.G.MARG CIVIL LINES ALLAHABAD U.P
2. Adv. / Consult
   MR.BIPIN GARG
   B-1/1289,A-VASANT KUNJ, NEW DELHI
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. 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 – 110 066.
Principal Bench, New Delhi

COURT NO. II
Excise Appeal No. 5472 of 2004

[Arising out of the Order-in-Appeal No. 402/CE/Alld/2003 dated 27/08/2003 passed by The Commissioner (Appeals), Central Excise, Allahabad.]

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?	:

M/s Khem Chand Concrete Sleeper Plant — Appellant

Versus

CCE, Allahabad — Respondent

Appearance

Shri Bipin Garg, Advocate – for the appellant.

Shri C.S. Rajput, Authorized Representative (DR)– for the Respondent.

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

DATE OF HEARING : 14/08/2008.

FINAL Order No. 626/08-EX Dated : ____________

Per. S.S. Kang :-

Heard both sides. The appellant filed this appeal against the impugned order, whereby demand was confirmed and penalties are imposed. Brief facts of the case are that appellant are engaged in the manufacture of Mono Block Concrete Sleepers and availing the facility of fortnightly payment of duty, as in some cases, the appellants paid duty after the due dates. In this situation, the proper officer debarred the applicant for payment of duty on fortnightly basis w.e.f. 20/02/01. The case of the revenue is that during the forfeiture period, the appellant are ~~to pay~~ liable to pay duty through account current account. During the forfeiture period, the appellants ~~are~~ cleared the goods on payment of duty from Cenvat account as well as from PLA. In the present proceedings, the payment made through Cenvat account was not accepted and appellants were directed to pay the duty through PLA.

2. We find that the issue whether during the forfeiture period, the assessee can clear the goods consignment-wise for making the payment through Cenvat account in the case of **Lloyds Steel Industries Limited vs. Union of India** reported in **2005 (183) E.L.T. 351 (Bom.).** The Hon'ble High Court has held as under :-

> "5. It is not in disputed that the petitioner who is manufacturer has defaulted on account of the facility extended to him to discharge his duty liability by debiting the account current or utilising Cenvat credit. Under the said provisions where facility of payment of duty on fortnightly basis on removal of goods from the factory premises or from an approved place of removal is granted under the said Rule, in such contingency, it is provided that the manufacturer shall forfeit the facility to pay the dues in installments under this sub-rule for a period of two months, starting from the date of communication of an order passed by the proper officer in this regard and during this period the manufacturer shall be required to pay excise duty for each consignment by debit to the account current referred to in clause (b).

6. It is not disputed that the liability to pay duty can be discharged by debiting the account current or utilizing Cenvat credit, which is considered as good as making payment by debiting account current, in support of which reliance has been placed on the circular issued by the Central Board for Excise and Customs on 20/1/1998."

3. We find that the ratio of the above decision is applicable, the impugned order is not sustainable and the same is set aside. The appeal is allowed.

(Dictated and pronounced in open court)

(S.S. Kang)
Vice President

(Rakesh Kumar)
Member (Technical)

PK