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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/3521/2005 - EX[DB], E/1632 & 1788/06 Date 19/12/2008

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

To :
M/S H.M.T. (T.D.) LTD.
PINJORE, DISTRICT PANCHKULA, HARYANA

M/S H.M.T. (T.D.) LTD. Appellant
Vs
C.C.E. PANCHKULA Respondent

I am directed to transmit herewith a certified copy of **Final order No. 938-940/2008- EX[DB]** dated 12-12-08 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. PANCHKULA
   SCO NO. 407 AND 408, SECTOR 8, PANCHKULA (HARYANA) .
   134119
2. Adv. / Consult
   MR.V.LAKSHMI KUMARAN
   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 - 3
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). Thyagarava Road. T. Nagar.Chennai
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-1
15 Office Copy
16 Guard file
17. M/S. ESCORTS LTD., (AMG)
PLOT NO. 2 & 3, SECTOR-13,
FARIDABAD
18. M/S. EICHER TRACTORS,
59, NIT, FARIDABAD

Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. III

Excise Appeal No. 3521/05, 1632& 1788 of 2006

[Arising out of Order-in-Original No. 17/Commr/PKL/2005 dated 22.9.2005, passed by Commissioner of Central Excise, Panchkula and Order-in-Original Nos. 34 & 35/KKJ/Adjn/2005-06 dated 31.1.2006 both passed by Commissioner of Customs & Central Excise, Delhi IV, Faridabad.]

For approval and signature:

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

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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? :

M/s. HMT Ltd.
M/s. Escorts Ltd. (AMG)
M/s. Eicher Tractors

Appellants

Vs.

Commissioner of Central Excise
Panchkula, & Delhi IV, Faridabad

Respondents

Appearance:

Mr. B.L. Narasimhan, Advocate for the Appellant
Mr. H.K. Thakur, DR for the Respondent

CORAM:

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

Date of Hearing /Decision: 12.12.2008

FINAL **ORDER NO. 938 - 940 / 2008 - Ex**

Per P.K.Das (for the Bench):

1. Common issue is involved in these appeals and, therefore, all are being taken up together for decision.

2. After hearing both the sides and on perusal of the records, we find that the Tribunal vide Misc. order No. 123/08-Ex dated 30.1.08 referred these appeals before Larger Bench on the following questions:-

i. "Whether the order dated 23.11.2006 passed by CESTAT, Bangalore enunciates the correct position of law and hence the input credit taken, when the final product was dutiable, need not be reversed on the final product becoming exempt from payment of duty w.e.f. 09.07.2004?

or

ii. Whether the order dated 01.02.2007 passed by CESTAT, Chennai enunciates the correct position of law and hence the input credit taken in respect of inputs in stock or in process or contained in the final product in stock on 09.07.2004 is to be reversed and is to be recovered if adequate credit is not in balance? "

3. Learned advocate on behalf of the appellants placed the copy of Larger Bench decision vide Misc. Order No. 878-880/2008-Ex dated 24.10.08. The relevant portion of the Larger Bench is reproduced below:

"20. On perusal of the Rule 6 of Rules, 2002 and the corresponding Rules, as mentioned above, we are of the view that the Appellants had correctly taken the credit and utilised, when the final product was dutiable and there is no requirement to reverse the credit on final product becoming exempt and such credit cannot be recovered under Rule 12 of the Rules, 2002 corresponding to Rule 57I, 57AH of Rules, 1944.

21. We find that the different benches of the Tribunal have taken the similar view in the case of C.N.C. Commercial Ltd. (supra) upheld by the High Court, Saboo Alloys Pvt. Ltd. (supra) Swastik Textile Engineers Ltd. (supra) and E.S.L. Ltd. (supra). We agree with the views expressed in the said decisions.

22. In view of the above discussions, we hold that when the input-credit legally taken and utilised on the dutiable final products, need not be reversed on the final product becoming exempt subsequently w.e.f. 9.7.2004. The decision of the Bangalore Bench in the case of TAFE Ltd. (Tractor Division) vs. CCE, Bangalore -2007 (79) RLT (Tribunal-Bangalore) enunciated the correct position of the law. The issue is thus, answered in favour of the assessee and against the Revenue."

4. We find that the issue has been decided in favour of the assessee and against the Revenue by the Larger Bench of the Tribunal. In view of that all impugned orders are not sustainable. Accordingly, impugned orders are set aside. All the appeals are allowed with consequential relief.

(Dictated & Pronounced in the open Court)

(M. Veeraiyan)
Member(Technical)

(P.K. Das)
Member(Judicial)

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