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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/4821/2004 - EX[DB] Date 22/10/2008

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

To :
C.C.E. CHANDIGARH
PLOT NO 19, SECTOR 17-C, CHANDIGARH

C.C.E. CHANDIGARH Appellant
Vs
M/S RAMA INDS. Respondent

I am directed to transmit herewith a certified copy of **Final order** No. 769/08-**EX[DB]** dated 17-10-08 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
   M/S RAMA INDS.
   VILL.- CHAUNDHERI, P.O. DAPPAR, DISTT. PATIALA
2. Adv. / Consult

   NONE

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). Thyagaraya 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
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Assistant Registrar
(Excise Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing/decision:17.10.2008

Central Excise Appeal No.4821 of 2004

Arising out of the order in appeal No.509/CE/Chd/2004 dated 7.7.04 passed by the Commissioner (Appeals II), Central Excise, Chandigarh.

For Approval and Signature:

Hon'ble Mr. Justice S.N. Jha, President
Hon'ble Mr. M. Veeraiyan, Member (Technical)

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2	Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3	Whether their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

Appellant — Respondent

C.C.E, Chandigarh vs. M/s Rama Industries

Appearance:

Shri B.S. Suhag, Authorized Departmental Representative (DR) for the Revenue and none for the respondent

Coram: Hon'ble Mr. Justice S.N. Jha, President
Hon'ble Mr. M. Veeraiyan, Member (Technical)

Final Order No. 769/08-EX

Per M.Veeraiyan:

This is an appeal by the Department against the order of the Commissioner (Appeals) No. 509/CE/Chd/2004 dated 7.7.04.

2. None appears for the respondent despite notice issued on 5.9.08 for hearing to be held today. On earlier occasion also , it was found that none represented the respondent. Heard the learned DR for the Revenue.

3. The respondent paid a sum of Rs.11,85,426/- (Rs.8 lakhs by debiting from Cenvat credit account and balance by cash) in a dispute which was later settled in their favour. The original authority sanctioned the refund by giving credit of Rs.8 lakhs in the Cenvat credit account and the balance by cheque. The party filed appeal before the Commissioner (Appeals) who allowed the refund in cash on the ground that the party was not in a position to utilize the credit due to closure of their factory. He has relied on the decision of the Tribunal in the case of C.C.E. ,Rajkot vs. Deepak Vegetable Oils Industries – 2001 (127) ELT 817 (Tri.-Mumbai).

4. The Learned DR submits that the company was closed due to problems faced by them and they were not in a position to utilise the available credit. The department was in no way responsible for their inability to utilize the Cenvat credit. Under these circumstances, the reliance placed by the Commissioner on the decision in the case of Deepak Vegetable Oil Industries cited supra was not proper. He also submits that no legal provision exists for refund either by cash or by cheque from the Cenvat account except when the same relates to credit attributable to input which has gone into the final product which was exported. He relies on the decision of the Tribunal in the case of C.C.E, Chennai vs. Rajashree Cements reported in 2001 (132) ELT 724 (Tri-Chennai) and in the case of Purvi Fabrics & Texturise (P) Ltd. vs. C.C.E., Jaipur II reported in 2004 (172) ELT 321 (Tri-Del.). Learned DR also submits that adjusting Rs.8 lakhs from the Cenvat credit they have not paid any duty in cash or by debiting from their PLA.

5. We have carefully considered the submission and perused the records. Credit in Cenvat credit has to be generally used towards payment of duty on final product. Refund in cash from Cenvat credit account is an exception. The only exception is in respect of credit attributable to input which has gone into export product. The decision in the case of Rajashree Cement and Purvi Fabrics & Texturise (P) Ltd. cited supra are relevant to the present facts of the case. The case of Deepak Vegetable Oil Industries has been wrongly relied upon by the Commissioner (Appeals). Therefore, his order allowing cash refund of the amount from Cenvat account is not

legal and proper. Therefore, we set aside the order of the Commissioner (Appeals) and restore the order of the original authority.

6. The appeal is allowed with consequential relief as per law.

(Dictated and pronounced in the open Court)

(Justice S.N.Jha)
President

(M. Veeraiyan)
Member (Technical)

scd/