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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/737 /2007 - EX[DB]   Date 05/02/2009

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

To :
M/S BHARAT HEAVY ELECTRICALS LTD
SHRI M.K.SHARMA, SR. DY. GM (EXX), P.O.
RANIPUR, HARIDWAR -
249403

M/S BHARAT HEAVY ELECTRICALS LTD   Appellant
Vs
C.C.E MEERUT-I   Respondent

I am directed to transmit herewith a certified copy of **Final order** No.101/09 & S.O.NO.130/2009- **EX[DB]** dated 2-2-09

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 MEERUT-I
MANGAL PANDEY NAGAR, MEERUT
2. Adv. / Consult
MR.RUPESH KUMAR
46, BANK ENCLAVE, 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 - 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-15
15 Office Copy
16 Guard file

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO.II

E/Stay 654/07, E/Appeal No.737/2007 -Ex(Br)

(Arising out of order in original No.143-144/Commr/Meerut-I/06 dated 20.12.06 passed by the Commissioner of Central Excise, Meerut)

M/s Bharat Heavy Electricals Ltd — Appellant

Vs

CCE, Meerut — Respondent

Appeared for Appellant : Shri Rupesh Kumar, Advocate
Appeared for Respondent : Shri B.S. Suhag, DR

Date of Hearing: 7.1.09

Coram: Hon'ble Mr.D.N. Panda, Judicial Member
Hon'ble Mr. Rakesh Kumar, Technical Member

STAY Order No. 130/2009-EX /20~~08-Ex(BR)~~
FINAL ORDER NO 101/2009-EX
Per D.N. Panda:

The only dispute in this case is whether maintenance of separate record of raw material/capital goods is required as per Rule 6(2) of Cenvat Credit Rules, 2002 when the finished goods supplied were subject to nil rate of duty by virtue of notification issued under the law and falling under Rule ~~6(vii)~~ 6(6)(vii) of above Rules.

2. Learned Counsel Shri Rupesh Kumar submits that the matter in controversy in this appeal is governed by Notification No.6/02-CE dated 1.3.2002. It is the intention of the notification that the

goods manufactured and supplied against the international bidding shall be exempt from duty. This is the only order of adjudication which has caused injury to the appellants while the adjudication order dated 26.12.07 passed by the same commissioner has granted relief to the appellants. Similarly an order of adjudication dated 30.12.2008 passed by Tiruchirapalli Commissionerate has also granted relief to the appellants. In view of such a situation, he prays that there should not be conflicting decisions by authorities and prays for dispensing with pre-deposit.

3. Learned DR appearing for the Revenue supports the order of adjudication. He submits that when there is a specific rule to grant cenvat credit to an assessee and that rule requires maintenance of record to substantiate their claim, such a mandatory requirement cannot be dispensed with. When the appellant had not come out with clear record, they were bound by the order of adjudication.

4. Heard both sides on two occasions. The first occasion was on 20.2.2008. The appellant's claim is that they were granted relief by the same Commissionerate subsequently and another Commissionerate of Tiruchirapalli also on the self same issued as aforesaid. The Appellant being a public sector undertaking, we do not propose to keep the appeal pending. We therefore, dispense with pre-deposit and considering gravity of the matter, dispose the appeal by this common order. We considered remand of the matter to the learned authority to examine the issue afresh in the light of its subsequent decision on similar issue and also in the

light of order passed by Tiruchirapalli Commissionerate. The appellant is entitled to a fair opportunity of hearing and to lead its defence before the authority.

5. Learned Counsel has also argued that they are governed by Rule(6)(6)(vii) of Cenvat Credit Rules. Therefore, the learned Commissioner has to examine specifically whether they are so covered and if so, appropriate decision may be taken.

6. In the result, both the stay application and appeal are disposed of.

(Order dictated and pronounced in the open Court).

(D.N. Panda)
Judicial Member

(Rakesh Kumar)
Technical Member

MPS*