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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/5764/2004 - EX[DB] Date 19/02/2009

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

To :
C.C.E.GHAZIABAD
C.G.O.COMPLEX-II,KAMLA NEHRU
NAGAR,GHAZIABAD
C.C.E.GHAZIABAD Appellant

Vs

M/S SAMTEL COLOR LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order** No.136/2009- **EX[DB]** dated 12-2-09

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent

M/S SAMTEL COLOR LTD.

CHHAPRAULA,B.S.ROAD GHAZIABAD

2. Adv. / Consult SH. B.L.NARASIMHAN, ADV,
B-6/10, S.J. ENC.
N. DELHI-29

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)

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

<u>COURT – III</u>

<u>CENTRAL EXCISE APPEAL NO. 5764 OF 2004</u>

[Arising out of Order-in-Appeal No. 134/CE/GZB/04 dated 10.09.2004 passed by the Commissioner (Appeals), Central Excise, Ghaziabad]

For approval and signature:

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

1.	Whether Press Reporters may be allowed to see the order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	NO
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	NO
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

CCE, Ghaziabad — Appellant

Vs.

M/s. Samtel Color Limited — Respondent

Appearance:

Shri C.S. Rajput, Departmental Representative, for the Revenue,
Shri B.L. Narasimhan, Advocate for the respondent

Coram:

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

Date of hearing/decision: 12th February, 2009

FINAL ORDER NO. 136/09-EX **dated** ________

Per M. VEERAIYAN:

This is an appeal by the department against the order of the Commissioner (Appeals) No. 134/CE/GZB/04 dated 10.09.2004.

2. Heard both sides.

3. The respondent is a manufacturer of Color Picture Tubes for T.V. and dispute relates to Summi cream cement/ Summi cement which are used in frit sealing, exhaust and gun sealing to check temperature during manufacturing of picture tube. Initially the respondent claimed these items as inputs used in relation to the manufacture of picture tubes but before the original authority conceded that the same cannot be treated as inputs but claimed that the same should be treated as spares/components/accessories of capital goods. The claim was rejected by the original authority and the CENVAT Credit disallowed. He also imposed penalty. However, the Commissioner (Appeals) allowed the appeal treating the said goods as spares/components/accessories of the capital goods.

4. Learned D.R. draws our attention to the definition of the capital goods and submits that in terms of said definition Summi cream cement/Summi cement are not capital goods and they cannot be treated

as components/spares/accessories of the aforesaid capital goods as the items are used for floor painting.

5. Learned Advocate for the respondent submits that even if the said items cannot be considered as capital goods or spare parts/components/accessories of capital goods, they deserve to be considered as inputs in relation to the manufacture of final product and, therefore, they are eligible for CENVAT credit. He also relies on the decision of the Tribunal in their own case Samtel Colour Ltd. vs. CCE, Ghaziabad, reported in 2005 (192) ELT 372 (Tri. – Del.) on similar issue.

6. We have carefully considered the submissions from both sides. We find that the respondent has taken different stands before us than those taken before the original authority. Nevertheless the goods have to be considered either as capital goods or spare parts/components/accessories of capital goods or as inputs. In this particular case the claim of the respondent that the impugned goods should be treated as inputs deserves to be accepted. The use of these items, as claimed by the respondent, is admitted in the grounds of appeal. Therefore, we do not find any reason to interfere with the final decision of the Commissioner (Appeals) allowing Cenvat credit though we have come to the same conclusion on different reason.

7. Appeal is rejected.

(Dictated & pronounced in the Open Court.)

(M. VEERAIYAN)
MEMBER (TECHNICAL)

(P.K. DAS)
MEMBER (JUDICIAL)

RK