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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/5806/2004-5807/2004 - EX[DB] Date 26/02/2009

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 RADIANT POLYMES PVT.LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 161-162/2009- **EX[DB]** dated 03-2-09 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 RADIANT POLYMES PVT.LTD.
   A-4/8 SITE-IV INDL.AREA SAHIBABAD GHAZIABAD
2. Adv. / Consult

   NONE

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)

M/S ~~RANDIANT POLYMERS PVT.LTD.~~
~~A-4/8,SITE-IV,INDUSTRIAL,AREA SAHIBABAD GHAZIABAD~~

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

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

COURT-III

Date of hearing/decision: 3.2.2009

Central Excise Appeal Nos.5806-5807 of 2004

Arising out of the order in appeal No.113-114-CE/GZB/2004 dated 27.8.04 passed by the Commissioner, Central Excise (Appeals), Ghaziabad.

For Approval and Signature:

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

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?	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

Appellant		Respondents
C.C.E., Ghaziabad	vs.	M/s Radiant Polymers Pvt. Ltd.

Appearance:

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

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

FINAL Order No. 161 - 162 / 09 - EX

Per P.K. Das:

Both the appeals are arising out of a common order and therefore, both are being taken up together for disposal.

2. Revenue filed these appeals against the order No.113-114-CE/GZB/2004 dated 27.8.04 passed by the Commissioner (Appeals) whereby the adjudication order was set aside.

3. Heard the learned DR on behalf of the Revenue. None appeared for the respondents.

4. After hearing the learned DR and on perusal of the record, we find that the respondent were engaged in the manufacture of component/parts and supplying the same to M/s Denso India Ltd. (in short , M/s Denso), who are manufacturing automobile parts and components. The respondent availed Cenvat credit on moulds and dies supplied by M/s Denso. It has been alleged that Respondents were not the owner of the capital goods and are not eligible to avail the credit. Commissioner (Appeals) set aside the order passed by the original authority.

5. On perusal of the impugned order, we find that the Commissioner (Appeals) observed that the ownership of the capital goods for availing modvat credit is not sustainable in view of the decision of the Tribunal in the case of HIS Automobiles Ltd. vs. C.C.E., Chennai - 2004 (163) ELT 116 (Tri-Chennai) and in the case of M/s Hongo India (P) Ltd. - 2003 (16) ELT 470 (Tri-Del.). It has been contended by the learned DR that Revenue also filed appeal against the decision of the Tribunal which is still pending before the Hon'ble High Court. We agree with the findings of the Commissioner (Appeals). The Tribunal held that the ownership is not necessary for availing credit on the capital goods.

5. In view of that, we do not find any merit in the appeal filed by the Revenue. Accordingly, both the appeals are rejected.

(Dictated and pronounced in open Court)

(M. Veeraiyan)
Member (Technical)

(P.K. Das)
Member (Judicial)

scd/