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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/6000/2004-6001/2004 - EX[DB] Date 06/03/2009

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

To :
M/S HIND LAMPS LTD.
THROUGH COUNSEL C.HARI SHANKAR & S.SUNIL
46,BANK ENCLAVE,N.DELHI-92

M/S HIND LAMPS LTD. Appellant
Vs
C.C.E.KANPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 185-186/2009- **EX[DB]** Dated11-2-09 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.KANPUR
   SARVODAYA NAGAR KANPUR U.P
2. Adv. / Consult
   MR.C.HARISHANKAR
   46, BANK ENCLAVE,DELHI-110092

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
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Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Excise Appeal No.6000 of 2004 and
Excise Appeal No.6001 of 2004-Excise Branch

[Arising out of Order-in-Appeal No.445-446/CE/APPL/KNP dated 31.08.2004 passed by the Commissioner of Central Excise (Appeals), Kanpur (U.P.)]

Date of Hearing/ Decision:11.02.09

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 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? : No
3. Whether Their Lordships wish to see the fair copy of the Order? :
4. Whether Order is to be circulated to the Departmental authorities? : Yes

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M/s. Hind Lamps Ltd. ...Appellants
[Rep. by Shri C. Hari Shankar, Advocate with Shri Pushkar, Advocate]

Vs.

CCE, Kanpur ...Respondent
[Rep. by Shri Virender Choudhary, DR]

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

FINAL Order No. 185/09-Ex /Dated:11.02.2009
FINAL ORDER No. 186/09-Ex.

Per P.K. Das:

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

2. The relevant facts of the case, in brief, are that the appellants are engaged in the manufacture of various types of lamps falling under Chapter 85 of the Central Excise Tariff Act, 1985. They were availing Modvat benefit. Show cause notices were issued proposing to disallow the credit for the period March, 1997 to September, 1997 on the ground that the appellants availed credit without filing proper declaration under Rule 57 G of erstwhile Central Excise Rules, 1944. It has been alleged that the appellants availed the credit on the inputs viz. Lamp Cap Sheet Coils, Brass Coils, Brass Foils, Aluminium Rolled products, Gummed Tape Brown Plan, etc. and declaration was filed in respect of Photo tubes and Aluminium strips. The Original Authority dropped the proceedings on both the show cause notices. Revenue filed appeals against the Adjudication Orders. The Commissioner (Appeals) held that Modvat credit was not admissible and allowed the appeals filed by the Revenue. Hence, the appellants filed these appeals.

3. Ld. Advocate on behalf of the appellants submits that sub-heading numbers as indicated in the Modvat declaration and duty paying documents are one and same. He further submits that the appellants declared the broad description of the inputs in the declaration. He also submits that in view of the amendment of Rule 57G in the year 1999, the credit cannot be denied for non-filing of the declaration. He also submits that the Larger Bench of the Tribunal in the case of Kamakhya Steels Pvt. Ltd. Vs. Commissioner reported in 2000 (121) ELT 247 (T-LB) held

that amendment of Rule 57G in 1994 would be prospectively effective. He also relied upon the decision of the Hon'ble Punjab & Haryana High Court in the case of Commissioner of Central Excise, Delhi-III Vs. A.B. Card Clothing (Pvt.) Ltd. reported in 2008 (222) ELT 359 (P&H).

4. Ld. DR reiterates the findings of the Commissioner (Appeals). He submits that the appellants had not declared the correct description of the inputs in the Modvat declaration.

5. After hearing both the sides and on perusal of the records, we reproduce the findings of the original authority as under:-

> "I have carefully gone through the show cause notice, defence reply, record of personal hearing and the documents available on record and observed that the issue involved in this case is that the party availed modvat credit without filing declaration as required under Rule 57 G of the Central Excise Rules, 1944.
>
> From the description as given in the invoices and as declared by the party in their declaration filed under Rule 57G of Central Excise Rules, 1944, it is seen that tariff sub-heading are one and same as given in the invoices as well as declared in the modvat declaration. On examination of the description as given in the invoices along with the description given in the declaration it is seen that both the trade names have been used for one item in all the five inputs.
>
> I am therefore convinced with submission of the party and hold that the party had availed the above credit after filing the required declaration and therefore, Modvat credit can not be disallowed due to minor variation in the

nomenclature of the inputs when the inputs is the same and one item. I am also convinced with the judgement cited by the party in their defence. In the circumstances, I do not agree with the allegation in the show cause notice and hold that the show cause notice is liable to be dropped."

6. The Commissioner (Appeals) observed that mere mentioning of the Chapter, sub-headings are not sufficient to allow Modvat credit. On perusal of the order of the original authority, we find that the original authority examined the modvat declaration with the duty paying documents and observed that there is minor variation in the nomenclature of the inputs. We accept the contention of the ld. Advocate that these strips have come in the coil form. It is held by the Hon'ble Punjab & Haryana High Court in the case of A.B. Card Clothing Pvt. Ltd. (supra) that the credit cannot be denied on the minor variation of the description in the modvat declaration. It is noticed that the Board has also issued Circular No.441/7/99/CX dated 23.2.99. There is no dispute that the appellants received the inputs accompanied with the duty paying documents and duly used in the manufacture of finished goods and also recorded in the statutory records. Therefore, there is no reason to deny the credit on the minor variation in the modvat declaration in view of the amendment of Rule 57G of the erstwhile Rules in 1999.

7. Accordingly, we set aside the order of the Commissioner (Appeals) and restore the adjudication orders. Both the appeals are allowed with consequential relief.

Order dictated & pronounced in open court on 11.02.2009.

(M. Veeraiyan)
Member (Technical)

(P.K. Das)
Member (Judicial)

Ckp.