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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/2906/2007-2909/2007 - EX[DB]

Date 06/03/2009

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


To :
M/S NEW HOLLAND TRACTORS (INDIA)PVT. LTD.
PLOT NO 03, UDYOG KENDRA, GREATER NOIDA
(UP)-201306
M/S NEW HOLLAND TRACTORS (INDIA)PVT. LTD.

Appellant
Vs
Respondent

C.C.E. NOIDA

EX[DB] dated 24-2-09

I am directed to transmit herewith a certified copy of Final order No. 198-201 - 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. NOIDA

B-123, SECTOR 5, NOIDA.

2. Adv. / Consult

MR.V. LAXMIKUMARAN

B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029

3 C.D.R

~~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 Publications (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

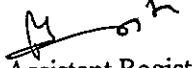
12 Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai

13 Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kuni, 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)

17- RAHUL SANON DGM FINANCE
M/S NEW HOLLAND TRACTORS (INDIA) PVT LTD, PLOT NO
03, UDYOG KENDRA, GREATER NOIDA(UP)

P.T.O.-2,

16. RAKESH MALHOTRA, DIRECTOR(FINANCE)
M/S, NEW HOLLAND TRACTORS (INDIA) PVT LTD, PLOT NO
03, UDYOG KENDRA, GREATER NOIDA(UP)

17. S.S.NEGI, MANAGER(EXCISE)
M/S NEW HOLLAND TRACTORS (INDIA) PVT LTD, PLOT NO
03, UDYOG KENDRA, GREATER NOIDA(UP)

**IN THE CUSTOMS, EXCISE AND SERVICE TAX
APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. III**

Excise Appeal No. 2906-2909 of 2007

[Arising out of Order-in-Original No. 28/Comm/2007 dated 22.8.2007
passed by Commissioner of Central Excise, NOIDA.]

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?
 2. Whether it should be released under Rule 27: of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?
 3. Whether Their Lordships wish to see the fair copy of the Order?
 4. Whether Order is to be circulated to the Departmental authorities?
-

Appellants

M/s. New Holland Tractors (India) Pvt. Ltd.
Shri Rakesh Malhotra, Director(Finance)
Shri Rahul Sanon, D.G. M. (Finance)
Shri S.S. Negi, Manager(Excise)

Vs.

Respondent

Commissioner of Central Excise
NOIDA

Appearance: Shri Ravi Raghavan and Shri Raghuveer Srinivasan,
Advocates for the Appellant
Mr. A.K. Rastogi, DR for the Respondent

CORAM:

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

Date of Hearing/Decision: 24.2.2009

FINAL ORDER NO. 198-201/09-EX.

Per P.K.Das (for the Bench):

Heard both sides and perused the records.

2. The appellants are engaged in the manufacture of a Tractor, which are dutiable till 9.7.2004. The issue involved in this case is as to whether the Cenvat credit is required to be recovered on the inputs lying in stock, contained in the finished products in stock and in the work in process on the date of final products exempted under Rule 12 of the Cenvat Credit Rules. Commissioner of Central Excise confirmed demand of duty alongwith interest and imposed penalty on the appellant company and on the ^{officer} appellant.
3. Learned Advocate submits that the issue has already been decided by the Larger Bench of this Tribunal in favour of the assessee in the case of M/s. HMT & others vs. CCE, Panchkula [2008-TIOL-1884-CESTAT-Del-LB]. Learned DR relied upon the decision of the Division Bench in the case of Albert David Ltd. vs. CCE, Meerut [2003 (151) ELT 443 (Tri-Del)].
4. We find that the Larger Bench of the Tribunal in the case of M/s. HMT Ltd. & others (supra) has also gone through the decision of the Tribunal in the case of Albert Davit Ltd.. The relevant portion of the decision of the Tribunal in the case of M/s. HMT Ltd. (supra) is reproduced below:-

“20. On perusal of the Rule 6 of Rules 2002 and the corresponding Rules, as mentioned above, we are of the view that

the Appellants had correctly taken the credit and utilised, when the final product was dutiable and there is no requirement to reverse the credit on final product becoming exempt and such credit cannot be recovered under Rule 12 of Rules 2002 corresponding to Rule 57-I, 57AH of Rules 1944.

21. We find that the different benches of the Tribunal have taken the similar view in the cases of *C.N.C. Commercial Ltd.* (supra) upheld by the High Court, *Saboo Alloys Pvt. Ltd.* (supra), *Swastik Textile Engineers Ltd.* (supra) and *E.S.L. Ltd.* (supra). We agree with the views expressed in the said decisions.

22. In view of the above discussions, we hold that when the input-credit legally taken and utilised on the dutiable final products, need not be reversed on the final product becoming exempt subsequently w.e.f. 9-7-2004. The decision of the Bangalore Bench in the case of *TAFE Ltd. (Tractor Division) v. CCE, Bangalore - 2007 (79) RLT (Tribunal-Bangalore)* enunciated the correct position of the law. The issue is thus, answered in favour of the assessee and against the Revenue.

23. Before we part, we observe that this order is passed without going into the submission of the Id. Advocate that the Notification No. 10/2007-C.E. (N.T.), dated 1-3-2007 inserted sub-rule (3) to Rule 11 of Rules 2004, is a specific provision for reversal of credit because such issue was not in the referral order.

24. The reference having thus been answered, the records may be placed before the Regular Bench for final disposal of the appeals.”

5. In view of the decision of the Larger Bench of the Tribunal in M/s. HMT Ltd. (supra), we find that the impugned order is not sustainable. Accordingly, the impugned orders are set aside and all the appeals are allowed with consequential relief.

(Dictated & Pronounced in the open Court)

(M. Veeraiyan)
Member(Technical)

(P.K.Das)
Member(Judicial)