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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/4535/2004 - EX[DB] Date 12/05/2009

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

To :
M/S OMICRON ENGG. CO.
PLOT NO 312, UDYOG VIHAR PHASE-II, GURGAON

M/S OMICRON ENGG. CO. Appellant

Vs

C.C.E. DELHI-III Respondent

I am directed to transmit herewith a certified copy of **Final order No. 298/09- EX[DB]** Dated 08-4-09

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. DELHI-III

UDYOG VIHAR, UDYOG MINAR, VANIJYA NIKUNJ, PHASE V, GURGAON

2. Adv. / Consult SH. B.L. NARASIMHAN, ADV., B-6/10, S.J. ENCLAVE, N. DELHI-29
3. C.D.R
4. ~~J.C.D.R.~~
5. Bar association, CESTAT, New Delhi
6. Director Publications, Customs, Excise. I.P. Estate, New Delhi
7. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8. Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
12. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
13. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
14. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
16. Office Copy
17. Guard file

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

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

COURT-III

Date of hearing/decision:8.4.2009

Central Excise Appeal No.4535 of 2004

Arising out of the order in appeal No.231/AKG/GGN/04 dated 21.6.04 passed by the Commissioner (Appeals), Central Excise, Gurgaon.

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	Respondent
M/s Omicron Engg. Co. vs.	C.C.E., Delhi III

Appearance:

Shri B.L. Narasimhan, Advocate for the appellant
Shri S.N. Srivastava, Authorized Departmental Representative (DR) for the Revenue

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

FINAL Oral Order No. 298/09-EX

Per P.K. Das:

Heard both sides and perused record.

2. The appellants are engaged in the manufacture of electric switches classifiable under sub-heading No. 8536.90 and plastic moulded parts of motor vehicles under sub-heading 8708.00 of the CETA, 1985. They availed Cenvat credit on capital goods during the year 1996 to 1998 ~~and availed the credit~~ of Rs.5,41,286/-. They cleared the old and used capital

goods in July, 2001 on payment of concessional rate of duty under SSI exemption Notification. The show cause notice was issued proposing normal rate of duty at 16% and differential amount of Rs.2,14,432/- was demanded. The adjudicating authority confirmed the demand of duty and imposed penalty of Rs.50,000/-.Commissioner (Appeals) upheld the adjudication order and set aside the penalty.

3. The learned Advocate on behalf of the appellant fairly submits that the issue is already decided by the Larger Bench of the Tribunal in the case of Modernova Plastyles Pvt. Ltd. vs. C.C.E., Raigad – 2008 (232) ELT 29 (Tri-LB) whereby it has been held that the reversal of credit availed on capital goods is required when capital goods are removed whether used or not. It held that even used capital goods were covered by the expression 'as such' occurring in Rules 3 (4) and 4(5)(a) of Cenvat Credit Rules.

4. In view of that, we do not find any merit in the appeal filed by the appellant. Accordingly, the appeal filed by the appellant is rejected.

(M. Veeraiyan)
Member (Technical)

(P.K. Das)
Member (Judicial)

scd/