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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/863 /2006 - EX[DB] &E/306/2007-EX   Date 13/05/2009

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

To :
C.C.E. CHANDIGARH
C.R.,BUILDING, PLOT NO. 19, SECTOR 17-C,
CHANDIGARH 160017
C.C.E. CHANDIGARH   Appellant

Vs

M/S PUREWAL & ASSOCIATES LTD.   Respondent

I am directed to transmit herewith a certified copy of **Final order** No. 315-316/2009- **EX[DB]** 5-5-09

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 PUREWAL & ASSOCIATES LTD.
JUBBER, DISTT. SOLAN (H.P.)

2. M/S. P.A.TIME INDUSTRIES (UNIT-II)
KASAULI ROAD, DHARAMPUR,
DISTT. SOLAN (HP)

2. Adv. / Consult
SH. B.L. NARASIMHAN,
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
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16 Office Copy
17 Guard file
18. HON'BLE PRESIDENT

Assistant Registrar
(Excise Appeal Branch)

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

Excise Appeal No. 863 /2006- Ex(BR)

[Arising out of Order-in-Appeal No. 437/CE/CHD/2005 dated 16.12.2005. passed by Commissioner of Central Excise (Appeals), Chandigarh.]

Commissioner of Central Excise Chandigarh — Appellant
[Rep. by Shri Surender Shah, DR]

Vs.

M/s. Purewal & Associates Ltd. — Respondent
[Rep. by Shri B.L. Narasimhan, Advocate]

Excise Appeal No. 306 /2007- Ex(BR)

[Arising out of Order-in-Original No. 44/CE/CHD/06 dated 23.11.2006. passed by Commissioner of Central Excise, Chandigarh.]

M/s. P.A. Time Industries — Appellant
[Rep. by Shri B.L. Narasimhan, Advocate]

Vs.

Commissioner of Central Excise Lucknow — Respondent
[Rep. by Shri A.K. Rastogi, DR]

For approval and signature:

Hon'ble Mr. Justice R.M.S. Khandeparkar, President
Hon'ble Mr. M. Veeraiyan, Member (Technical)

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? :

CORAM:
Hon'ble Mr. Justice R.M.S. Khandeparkar, President
Hon'ble Mr. M. Veeraiyan, Member (Technical)

Date of Hearing/decision : 5.5.2009

FINAL **ORAL ORDER NO. 315-316/09-EX**

Per Mr. M. Veeraiyan (for the Bench):

1.1 Appeal No. 863/2006 is filed by the Department against the order of the Commissioner (Appeals) No. 437/CE/CHD/2005 dated 16.12.2005.

1.2 Appeal No. 306/ 2007 by M/s. P.A. Time Industries is against the order of the Commissioner No. 44/CE/CHD/06 dated 23.11.2006.

1.3 Both these appeals involve common issue and therefore, are being dealt with by a common order.

2. Head both sides.

3.1 Relevant facts in Appeal No. 863/2006 are that the respondents are manufacturers of watch parts and opted for notification No. 50/2003-CE dated 10.6.2003 with effect from 5.2.2004. The original authority held that inasmuch as the goods were cleared under exemption with effect from 5.2.2004. whatever credit was taken in respect of inputs prior to the said date and which is lying in stock and inputs, contained in finished goods are not eligible for credit, accordingly demanded duty and imposed penalty. However, Commissioner (Appeals) held that the credit has been validly taken and validly utilised and therefore, there is no need for reversing the credit on their opting for availing the exemption with effect from 5.2.2004.

3.2 In Appeal No. 306/07, the party, manufacturing wrist watches and watch parts, opted for the exemption under notification No. 50/2003 from 25.8.2006 and the Commissioner by the impugned order denied the credit and demanded the duty and imposed penalty.

4. Learned Advocate for M/s. P.A. Time Industries submits that the issue relating to eligibility of credit on inputs consequent to goods becoming exempted has been decided by the Larger Bench of this Tribunal in HMT vs. CCE, Panchkula reported in [2008 (232) ELT 217 (Tri-LB)] and same has been followed by the Tribunal vide Final Order No. 183/2009-SM(BR) dated 9.2.2009 in Excise Appeal No. 3617/2006 in respect of exemption under notification No. 50/2003 dated 10.6.2003.

5. Learned DR reiterates the finding of the original authority in the case of Appeal No. E/863/2006 and that of Commissioners in the case of Appeal No. E/ 306/2007.

6. We have carefully considered the submissions from both the sides. It has been held by the Larger Bench in the case of HMT cited (supra) that when the credit has been taken validly and the credit has been utilised validly, the question of reversal of credit does not arise. Relevant portion of the said decision is reproduced below:-

> **17.** It is also contended that the Appellants violated Rule 6(1) of Rules 2002, which provides that the Cenvat credit shall not be allowed on such quantity of inputs, which is used in the manufacture of exempted goods, except certain circumstances as specified in the sub-rule (2) of the said Rule. Rule 6(1) of Rules 2002 is corresponding to Rule 57C and 57AD(1) of Rules 1944, Rule 6(1) of Rules 2001 and Rules 2004.

18. In Modvat/Cenvat scheme, Rule 57C of Rules 1944 and the corresponding rules time to time restricted the availing of credit on such quantity of inputs, which are used in the manufacture of final products, which are exempted from the whole of duty of excise or chargeable to Nil rate of duty. Rule 57CC of Rules, 1944 was introduced in 1996 for adjustment of credit in inputs used in exempted final products or maintenance of separate inventory and accounts of inputs by the manufacturer. Rule 57CC of Rules, 1944 is corresponding to Rule 57AD (2), Rule 6(2) of Rules 2001, Rule 2002 and Rules 2004.

19. The Hon'ble Rajasthan High Court in the case of *Hindustan Zinc Ltd.* v. *Union of India* reported in 2008 (223) E.L.T. 149 (Raj.), while dealing with Rule 57C and Rule 57CC of Rules 1944 relying on the decision of Supreme Court in the case of *Dai Ichi Karkaria Ltd.* (supra) and Kerala High Court decision in the case of *Premier Tyres Ltd.* (supra) held that if on the date of entitlement, there is no illegality or invalidity in taking credit of such Modvat/Cenvat credit, right to utilisation such credit against further liability towards duty become indefeasible and is not liable to be recovered in such contingency. The relevant portion of the said decision is reproduced below :-

> Upshot of this discussion in that prohibition against "39. claiming Modvat credit on exempted goods or subject to nil rate of duty applies in case where such exemption from payment of Duty or nil rate of Duty on end product is predictably known at the time the recipient of inputs is entitled to take credit of duties paid on such inputs. The fact that due to subsequent notification or on contingency that may arise in future, the end product is cleared without payment of duty due to exemption or nil rate of duty does not affect the availing of Modvat credit on the date of entitlement. If on the date of entitlement, there is no illegality or invalidity in taking credit of such Modvat/Cenvat credit, the right to utilise such credit against future liability towards duty become indefeasible and it is not liable to be reversed in the contingency discussed above."

N

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.

7. In the light of above, we do not find any merit in the appeal by the Department. For the same reasons, we also hold that appeal No. 306/2007 by the Party deserves to be allowed.

8. Accordingly, we reject the appeal No. E/863/2006 and allow the appeal No. E/306/2007 with consequential relief as per law.

(Justice R.M.S. Khandeparkar)
President

(M. Veeraiyan)
Member(Technical)

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