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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/642 /1999 - EX[DB] Date 20/05/2009

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

To :
NATIONAL FERTILIZERS LTD.
(A GOVT.OF INFIA UNDER TAKING)VIJAIPUR DISTT
GUNA M.P.
473111

NATIONAL FERTILIZERS LTD. Appellant
Vs
C.C.E. INDORE Respondent

I am directed to transmit herewith a certified copy of **Final order No. 354/2009-EX- EX[DB]** dated 04-5-09 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
   C.C.E. INDORE
   MANIK BAGH PALACE, POST BOX NO. 10, INDORE 452001 (M.P.)
2. Adv. / Consult SH. A.C. JAIN, ADV.,
   103, PUSHPANJALI,
   VIKAS MARG, EXTENSION,
   DELHI-92
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
18. HON'BLE PRESIDENT

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Excise Appeal No. 642 of 1999

(Arising out of Order-in-Original No. 19/Commr/C.Ex/98-99 dated 30.12.1998 passed by the Commissioner of Central Excise, Indore).

DATE OF HEARING : 04.05.2009
DATE OF DECISION : 04.05.2009

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 ?	No
2.	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not ?	Yes
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

M/s National Fertilizers Ltd. .... **Appellant**
(Rep by Sh. A.C. Jain, Adv.)

VERSUS

CCE, Indore .... **Respondent**
(Rep. by Sh. Surender Shah, DR)

CORAM : HON'BLE MR. JUSTICE RMS KHANDEPARKAR, PRESIDENT
HON'BLE MR. M. VEERAIYAN, MEMBER (TECHNICAL)

FINAL **ORAL ORDER NO.** 354/09-EX

PER M. VEERAIYAN :

This appeal is directed against the order of the Commissioner no. 19/Commr/C.Ex/98-99 dated 30.12.1998. In fact, against this very same impugned order, the party's appeal on the limited issue of penalty, based on the COD clearance obtained, was dealt with and final order no. 437 of 2000-C dated 07.09.2000 has been passed setting aside the penalty and the matter stands referred to the Hon'ble High Court.

2. The appellant, has received further clearance from COD to contest the appeal also on merits, accordingly the appeal is being heard on merits.

3. Heard both sides extensively.

4.1. Learned advocate for the appellant submits that, the appellant are using NGL for the purpose of manufacture of fertilizers. For this purpose, they have been procuring the NGL till 22.07.1996 at concessional rate in terms of Notification No. 75/84-CE dated 01.02.1984 (which was in force till 22.07.1996) and at NIL rate of duty from 23.07.1996 under Notification No. 8/96-CE dated 23.07.1996. The present dispute relates to the period from February, 1995 to March, 1997. They used NGL in the running of Gas Turbine Generator (GTG) which produces the steam as well as electricity. The original authority allowed the concessional/nil rate under the above Notifications insofar as NGL attributable to the production of steam which was used in the manufacture of fertilizer. However, he held that the concessional/nil rate is not applicable in respect of proportionate quantity of NGL which has gone into the manufacture of electricity which was used for running the plant (The Ld Advocate submits that a small portion of electricity is supplied to the residential colony of the appellant company). Accordingly, the original authority confirmed the demand of Rs. 1,10,85,954/- along with interest, besides imposition of penalty. As already mentioned above, in the present proceedings, we are not dealing with the issue relating to the imposition of penalty which has already been decided by the Tribunal and the matter now stands referred to the Hon'ble High Court.

4.2. Learned advocate refers to the decision of the Hon'ble Supreme Court in the case of **IFFCO vs CCE,** 1996 (86) ELT 177 (SC), wherein it has been held that, Naptha used to produce ammonia which is used in the water treatment, steam generation, inert gas generation and effluent treatment plant of urea plant of the appellant was entitled to exemption provided under Notification No. 187/61-CE, as amended from time to time. He submits that the said ratio has been applied by the Tribunal in their decision in the case of **IFFCO** reported in 2001 (129) ELT 456, wherein it has been held that, "the demand attributable to raw naphtha utilized in the generation of power used for these purposes cannot be sustained at all". In the same decision, it has also been held that, "demand in respect of raw naphtha used in the generation of power supplied to residential complex could be maintainable." He further submits that the said ratio is applicable to the present case.

4.3. Learned advocate submits that the Department, for subsequent period, i.e April, 1997 to June, 2002, has allowed the benefit of concessional rate of duty for NGL except to the extent of duty on raw naphtha attributable to electricity diverted to the residential township of the appellant company. He also submits that during the period in dispute the demand relating to NGL used for electricity diverted for use by the colony is a small amount and they are prepared to pay the same.

5. In the above facts and circumstances, we feel that it would be appropriate to set aside the order of the Commissioner and remand the matter to the Commissioner for fresh consideration taking into account the above submissions made on behalf of the appellant, the judgments relied upon by them, and the subsequent decisions in favour of the appellant by the Commissioner (Appeals). As the matter relates to February, 1995 to March, 1997, the Commissioner shall dispose of the matter within four months from the date of receipt of this order after granting reasonable opportunity of hearing to the appellant.

6. The deposits made by the appellant in pursuance of order of the Tribunal shall be refunded after adjusting duty, if any, payable in pursuance of the order to be passed by the Commissioner.

7. Appeal is allowed by way of remand on the above terms.

(JUSTICE R.M.S. KHANDEPARKAR)
PRESIDENT

(M. VEERAIYAN)
MEMBER (TECHNICAL)

Golay