

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
SINGLE MEMBER APPEAL BRANCH

Appeal No. E/797 /2006-SM[BR]

Date 09/01/2008

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

To :
M/S NEW PACK PLASTICS P LTD.
C-34,SECTOR-59,NOIDA

M/S NEW PACK PLASTICS P LTD.

CCE,NOIDA

Appellant
Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No. 18/2008-SM[BR] dated 13.12.2007
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944


Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
CCE,NOIDA
B-123,SECTOR-5,NOIDA
2. Adv. / Consult SHRI. S.D.GAUR ADV.
SB108, SHASTRI NAGAR GHAZIABAD
3. S.D.R.
4. ~~J.C.D.R.~~
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, marg. 43, saket, New
7. M/s Centax Publications (P) Ltd., 1512-E, Bhishm Pitamah
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301
9. R.Venkatraman Constt. 44-B, S.Suncity, Ghaziabad -
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh,
12. Co. Law Institution
13. TAX INDIA, B-XI/8183, Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file


Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO.II

E/Appeal No.797/2006-SM

(Arising out of order in appeal No. 25/CE/Noida/06 dated 1.2.06 passed by the Commissioner (Appeals), Customs & Central Excise, Noida)

For approval and signature:

Hon'ble Mr.S.S. Kang, Vice President)

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?
-

M/s Newpack Plastics Pvt Ltd

Appellant
(Rep. by Shri S.D. Gaur, Consultant)

Vs

CCE, Noida

Respondent
(Rep. by Shri Rajmal, DR)

Coram: Hon'ble Mr S.S. Kang, Vice President

Date of Hearing: 13.12.2007

Per S.S. Kang:

Final Order No. 18/08-SM(BR)

Heard both sides. The appellants filed this appeal against the impugned order whereby Cenvat credit of Rs.2,21,112/- was denied and

penalty of equal amount was imposed on the ground that supplier of inputs are not manufacturing the inputs and required passing on the credit.

The contention of appellant is that they are engaged in the manufacture of self adhesive tapes and they received inputs Bondex A-117 from M/s Jesons Corporation under duty paying document. The contention is that as the duty has been paid by the supplier of inputs, the appellants availed the credit. The contention is that if the allegation that supplier of inputs had not taken any process amounting to manufacture as alleged by the revenue, then they are not liable to pay any duty. As duty paid by the supplier of inputs is accepted by the revenue, therefore, credit cannot be denied to the appellant. The appellant also submitted that it is settled law that excisability of goods cannot be reopened at the recipient end. The contention is also that in the present proceedings, the supplier of inputs is not a party. There is no allegation against the supplier of inputs that they had wrongly paid duty or that they had contravened the provisions of Act or Rule.

The contention of revenue is that appellant availed credit on the strength of invoices issued by M/s Jesons Corporation. The matter was enquired and it was found that M/s Jesons Corporation are not manufacturing the inputs supplied to the appellants therefore, credit was rightly denied.

I find that the appellants availed the credit on the strength of invoices issued by M/s Jesons Corporation showing payment of duty. In the invoices, it is mentioned M/s Jesons Corporation, manufacturer of self adhesive tapes, etc and that they are duly registered with the revenue authorities. The

revenue is not objecting regarding payment of duty by the supplier of inputs. The supplier of inputs is not party to the present proceedings. As the revenue is not disputing the payment of duty in respect of inputs received by the appellants and the use of the same in the manufacture of final product, therefore, denial of credit and imposition of penalty is not sustainable and hence set aside. The appeal is allowed.

(Order dictated and pronounced in the open Court).

MPS*

(S.S. Kang)
Vice President