

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

Appeal No. E/3607/2005-SM[BR]

Date 09/01/2008

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

To :
M/S U P POWER CORPORATION LTD
THROUGH JUNIOR ENGINEER
M/S ELECTRICITY POLE MANUFACTURING CIVIL SUB DIVISION
SAROJINI NAGAR, LUCKNOW [U.P.]

M/S U P POWER CORPORATION LTD

Appellant

C C E LUCKNOW

Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No.35/2008-SM[BR] dated 10.10.2007
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944


Assistant Registrar

Copy to :

1. Respondent
C C E LUCKNOW
5TH & 11TH FLOOR, KENDRIYA BHAWAN, SECTOR-
H, ALIGANJ, LUCKNOW
2. Adv. / Consult SHRI, Y.P. SINGH ADV.
C-68, PREET VIHAR DELHI-110092
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

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
PRINCIPAL BENCH, COURT NO.III

Appeal No.Excise/3607of 2005-SM (BR)

- ★ (Arising out of Order-in-Appeal No.328/C.E./2005 dated 24.6.05 of the Commissioner of Central Excise (Appeals), Lucknow).

For approval and signature:

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

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- 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 Department Authorities?

Yes

M/s. U.P. Power Corpon. Ltd.

...Appellant

Versus

CCE, Lucknow

.....Respondent

Appearance:

None for the appellant.

Shri S.L. Meena (DR), Authorised Representative for the respondent

Final Order No.....35/08 SM (BR)...../Dated:10.10.2007

Per P.K. Das:

None appeared on behalf of the appellant. Heard the ld. DR on behalf of the Revenue and perused the records.

2. The issue involved in this case is denial of Cenvat Credit under Rule 57H of the erstwhile Central Excise Rules, 1944. The appellant availed Modvat credit in respect of the inputs and finished goods under Rule 57H. Subsequently, the Superintendent of Central Excise by letter dated 6.2.96 directed the appellant to reverse the Modvat credit as inadmissible. The appellant challenged the letter dated 6.2.1996 before the Commissioner (Appeals) and the Commissioner (Appeals) vide his Order-in-Appeal No.157/96 dated 26.12.96 held as under-

“The appellant should await the decision of the jurisdictional competent Asst. Commissioner on their claim; if filed by them to him. Asstt. Commissioner will pass a speaking order after following the procedure if the appellant’s claim is pending in his office. The superintendent’s letter on the issue may be treated as a nullity on the issue.”

3. By adjudication order dated 13.12.99, the Asstt. Commissioner of Central Excise, disallowed the credit of Rs.1,71,261.29 as claimed by the appellant under Rule 57H of the Central Excise Rules, 1944. The appellants challenged this order before the Commissioner (Appeals). By order-in-appeal dated 24.6.05, the Commissioner (Appeals) set aside the adjudication order and remanded the matter to the adjudicating authority

for reconsideration. The relevant portion of the order-in-appeal is reproduced below:-

“ Accordingly, I set aside the impugned order and remanded the matter to the adjudicating authority for reconsideration. The appellant is directed to submit a reply on the reasons proposed for the inadmissibility of credits given in the letter dated 6.2.96 provided that no credit shall be taken unless the inputs were received in the factory under the cover of a Gate Pass, an A.R.I., as Bill of Entry or any other document as may be prescribed by the Central Board of Excise and Customs (constituted under the Central Boards of Revenue Act, 1963 (54 of 1963) in this behalf evidencing the payment of duty on such inputs and such evidence is made available by the assessee to the department.” (Underlining supplied)

4. Now, the appellant filed this appeal against the order in appeal dated 24.6.05.

5. After hearing Id. DR and on perusal of the records, it is seen that the main contention of the appellant is that the Commissioner (Appeals) in his earlier order-in-appeal held that the Superintendent's letter dated 6.2.96 is to be treated as a nullity on the issue. Therefore, the direction of the Commissioner (Appeals) in the impugned order that the letter dated 6.2.96 is to be treated as a show cause notice, cannot be accepted. I agree with the submission of the appellant. It is seen that the Commissioner (Appeals) in his earlier order-in-appeal dated 29.11.96 held that the letter dated 6.2.96 of the Superintendent of Central Excise, may be treated as nullity on the issue, which was not challenged by the Revenue by way of filing of the

appeal before the Commissioner (Appeals). It has further been held in the said order-in-appeal that the Asstt. Commissioner has to be treated the claim filed by the appellant under Rule 57H of the Central Excise Rules. Therefore, the direction of the Commissioner (Appeals) in the impugned order to submit a reply on the reasons proposed for the inadmissibility of credits given in the letter dated 6.2.96, is not sustainable. Therefore, the impugned order is modified insofar as the direction to submit a reply "on the reasons proposed for the inadmissibility of the credit and letter dated 6.2.96" in the impugned order is set aside, and otherwise the impugned order is upheld. The appeal is disposed of in the above terms.

Order dictated & pronounced in open court on 10.10.07.

(P.K. Das)
Member (Judicial)

Ckp.