

**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/3648/2005-SM[BR]

Date 11/01/2008

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

To :  
C.C.E KANPUR  
117/7, SARVODAYA NAGAR, KANPUR  
208005

C.C.E KANPUR

Appellant

Vs  
Respondent

M/S HIND LAMPS LTD

I am directed to transmit herewith a certified copy of Final order No. 53/2008-SM[BR] dated 8.11.2007 passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944

  
Assistant Registrar  
(SM Appeal Branch)

**Copy to :**

1. Respondent  
M/S HIND LAMPS LTD  
SHIKOHABAD
2. Adv. / Consult  
NONE--
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)

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE  
TRIBUNAL, R.K. PURAM, W.B. NO.2, PRINCIPAL BENCH  
NEW DELHI, COURT NO. III**

**Excise Appeal No. 3648 of 2005 –SM (BR)**

[Arising out of Order-in-Original No. 315-CE/APPL/Knp/2005 dated 31.8.2005  
passed by the Commissioner (Appeals) Customs & Central Excise, Kanpur].

**Date of Hearing/decision: 08.11.2007**

**For approval and signature:**

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

- |  |   |       |
|--|---|-------|
| 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? | : | } Yes |
| 3. Whether Their Lordships wish to see the fair copy of the Order?   | : |       |
| 4. Whether Order is to be circulated to the Departmental authorities?  | : |       |

CC&CE, Kanpur

Appellant

Vs.

Hind Lamps Limited

Respondent

Appearance:

Mr. B. S. Suhag, Authorized Representative (DR) for the appellant.  
None for the respondent.

**CORAM: Mr. P.K. Das, Member (Judicial)**

*Final* **ORDER** No

53 / 08-SM (BR)

**Per P.K. Das:**

Heard the learned authorized representative (DR) on behalf of the Revenue. None appeared on behalf of the respondent in spite of notice. There is no application for adjournment.

2. After hearing the learned authorized representative (DR) and on perusal of the record, I find that the issue involved in this case is availment of modvat credit left out exempted goods on a subsequent date when the bulbs exceeding 60W became non dutiable w.e.f. 24.07.91 in budget declaration of 1991-92 as on 24.07.2001. The learned DR contended that the respondent cannot avail credit on defaced invoices and the adjudicating authority rightly held that the respondent would have availed credit under Rule 57E of the erstwhile rules. I find that there is no dispute that the respondent is entitled to avail the credit. The only dispute is that the appellant should availed the credit under Rule 57E of the erstwhile Central Excise Rules. In this connection, the relevant portion of the order of the Commissioner (Appeals) is reproduced below:

“As already pointed out that the facts of the case are entirely different, the appellants following the guidelines of the CBEC on modvat where common inputs were used in the manufacture of both dutiable and non-dutiable products availed initially part credit attributable to inputs intended to be used for the manufacture of dutiable final products and the remaining credit was left as related to inputs to be used in exempted goods. Since, in the guidelines issued by the CBEC, there was a provision for final adjustment after actual use of the inputs, the appellant finding that final consumption of inputs was more than what they have availed credit for use in dutiable products, they adjusted it finally by availing credit 2<sup>nd</sup> time an amount of Rs. 40,899/- within six month of taking original credit. Details of inputs consumption in both dutiable & non dutiable product have already been submitted earlier before the adjudicating authority as well as before me alongwith a copy of certificate of Chartered Accountant. These detail have also been submitted alongwith reply to the show cause notice and I have observed that the department have not disputed it.

Further, I find that the Adjudicating Authority was of the view that the disputed credit could have been availed only on a certificate issued under Rule 57E by the proper officer, which I do not agree. Rule 57E was applicable in cases where duty paid on any inputs in respect of which credit have been allowed was varied subsequently due to any reason resulting in payment of refund, or recovery of more duty from the manufacture or importer, which is not in the instant case”.

3. It is seen from the order of the Commissioner (Appeals) that credit was allowed after verification of the evidences by the Commissioner (Appeals). In any event, it is well settled that the credit cannot be denied on mere procedural lapse. Therefore, I do not find any reason to interfere with the order of the Commissioner (Appeals). Accordingly, the appeal filed by the Revenue is rejected.

(Dictated and pronounced in the open Court)

**(P.K. Das)**  
**Member (Judicial)**

[Pant]