

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/3710/2005-SM[BR]

Date 16/01/2008

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

To :
M/S INDIAN ACRYLIC LTD
VILLAGE-HARIKISHANPUR, DISTT.- SANGRUR (PB)

M/S INDIAN ACRYLIC LTD

THE COMMISSIONER OF CENTRAL EXCISE
LUDHIANA

Appellant
Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No. 87/2008-SM[BR] dated 31.12.2007
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944


Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
THE COMMISSIONER OF CENTRAL EXCISE
LUDHIANA
F-BLOCK, RISHI NAGAR, LUDHIANA
2. Adv. / Consult
MR.K.K ANAND
A-5,BASEMENT,LAJPAT NAGAR-III NEW DELHI-24
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.3710 /2005-SM

(Arising out of order in appeal No.370/CE/App/Ldh/05 dated 24.8.05
passed by the Commissioner (Appeals), Customs & Central Excise,
Ludhiana)

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 ?
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 Indian Acrylic Ltd

Appellant
(Rep. by Shri Hemant Bajaj, Advocate)

Vs

CCE Ludhiana

Respondent
(Rep. by Shri A.K. Rastogi, DR)

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

Date of Hearing: 31.12.2007

Final Order No. 87/07-SM (BR)

Per S.S. Kang:

Heard both sides and perused the record.

2. The issue involved in this case is as to whether the suo-moto credit taken by the appellants is admissible or not. It is seen from the order of the Commissioner (Appeals) that Commissioner(Appeals) followed his earlier order in appeal No. 56/CE/Appeal/Ldh/2005 dated 31.1.2005 in appellants own case and held that the appellants shall not entitled to take suo-moto credit of the amount and they are required to follow the provisions of Section 11-B of the Central Excise Act, 1944. The learned Advocate on behalf of the appellants submits that this Tribunal vide Final Order No.414/2007 dated 2.2.2007 set aside the order in appeal dated 31.1.2005. The relevant portion of the said order is reproduced below:-

“In this case, the appellants reversed the credit during the pendency of the appeal at the asking of the Revenue and the same was challenged by filing the appeal before the Commissioner (Appeals). The Commissioner (Appeals) allowed the appeal. Revenue filed appeal before the Tribunal and the same was also dismissed. As denial of credit which was originally made by the adjudicating authority was set aside by the Commissioner (Appeals) and the same has been upheld by the Tribunal, therefore, there is no infirmity in the action of the appellant in taking credit of the same amount and as the credit has been taken as consequential relief, therefore, it cannot be said it is time barred. Further the appellant specifically mentioned that they had reversed the credit under protest. The impugned order whereby such claim held to be time barred is set aside and the appeal is allowed. “

In view of the order of the Tribunal as above, the impugned order is not sustainable and is set aside. The appeal is allowed with consequential relief.

(Order dictated and pronounced in the open Court).

MPS*

(P.K. Das)
Member(Judl)