

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/2504/2005-SM[BR]

Date 23/01/2008

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

To :
M/S U.P. POWER CO. LTD.
THROUGH ITS S.D.O., ELECTRICITY POLE
MANUFACTURING SUB DIVISIONAL, 220 K.V. SUB
STATION, BARAHVA, GORAKHPUR[U.P]

M/S U.P. POWER CO. LTD.

C.C.E. KANPUR

Appellant
Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No. 114/2008-SM[BR] dated 29.10.2007
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944


Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
C.C.E. KANPUR
117/7, SARVODAYA NAGAR, KANPUR 208005.
2. Adv. / Consult
MR. Y.P.SINGH, ADVOCATE
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
(SM Appeal Branch)

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

**PRINCIPAL BENCH NEW DELHI
COURT NO.III**

Excise Appeals Nos.2504 of 2005 -SM (BR)

{(Arising out of Order-in-Appeal No.135/CE/APPL/KNP/05 dated 28.2.2005 passed by the Commissioner of Central Excise (Appeals), Kanpur (U.P.))}

**DATE OF HEARING : 29.10.2007
DATE OF DECISION :29.10.2007**

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

.....Appellants

VERSUS

CCE, Kanpur

... ..Respondent

APPEARANCE

Rep. by Shri Y.P. Singh, Advocate for appellant.

Rep. by Shri S. Gautam, Authorised Departmental Representative (DR) for the respondent/Department.

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

Final ORDER NO. : 114 108-SM(BK)

PER P.K. Das:

The relevant facts of the case, in brief, are that the appellants are engaged in the manufacture of PCC Poles classifiable under sub-heading no.6807.00 of the Schedule to the Central Excise Tariff Act, 1985. It has been alleged that during the period 1.4.95 to 22.5.95, the appellants availed credit ^{under} on Rule 57 H of the erstwhile Central Excise Rules on the strength of invalid duty paying documents.

2. Ld. Advocate on behalf of the appellants contested the appeal on merit as well as barred by limitation. He submits that in this case the appellants availed credit on the basis of original copy of invoice. He further submits that it is admittedly procedural irregularity and, therefore, the Cenvat Credit cannot be denied. He also submits that there is no suppression of facts with intent to evade payment of duty and the demand of duty for the period 1.4.95 to 22.5.95 vide show cause notice dated 11.8.99 is barred by limitation.
3. Ld. DR reiterates the findings of the Commissioner (Appeals). He submits that both the authorities below have given sufficient opportunity to rectify the mistake in respect of duty paying documents but the appellants failed to do so. Therefore, both the authorities below rightly confirmed the demand of duty.
4. After hearing both the sides, I find that the issue involved in this case is that the appellants had taken credit on the strength of invalid duty paying documents. It is seen from the order that the Commissioner (Appeals)

observed that there are procedural and technical lapses in each case on the part of the appellants. Sub-rule (11) of Rule 57G of the erstwhile Central Excise Rules, 1944 was inserted vide Notification No.7/99-CE(NT) dated 9.2.99. It provides that the credit cannot be denied that the duty paying documents on the ground that the documents mentioned in sub-rule (3) does not contain all the particulars subject to satisfaction of the Asstt. Commissioner. That duty due on the inputs has been paid and such inputs have already been used or are to be used in the manufacture of the final products. The Larger Bench of the Tribunal in the case of Kamakhya Steels Pvt. Ltd. held that the said provisions would be effective retrospectively. In view of that, I set aside the impugned order and remand the matter to adjudicating authority to examine the case in the light of the above provision and Larger Bench decision of the Tribunal and to consider the submission on limitation and to pass order afresh in accordance with law. The appeal is allowed by way of remand.

Order dictated & pronounced in open court on 29.10.2007.

(P.K. Das)
Member (Judicial)

Ckp.