

**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/214 /2006-SM[BR]

Date 23/01/2008

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


To :  
M/S SNOWEEM INIDA LTD.  
PLOT NO-F-3//4 IND.AREA,GOTAN,DISTT.NAGAUUR  
(RAJ)

M/S SNOWEEM INIDA LTD.

CCE,JAIPUR-II

Appellant  
Vs  
Respondent

I am directed to transmit herewith a certified copy of Final order No. 121/2008-SM[BR] dated 4.12.2007  
passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

  
Assistant Registrar  
(SM Appeal Branch)

**Copy to :**

1. Respondent  
CCE,JAIPUR-II  
NCR,BUILDING,C SCHEME,JAIPUR-II
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
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Assistant Registrar  
(SM Appeal Branch)

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE  
TRIBUNAL, PRINCIPAL BENCH, NEW DELHI**

**COURT NO.III.**

**Appeal No.E/214 of 2006-SM (BR)**

(Arising out of the Order-in-appeal No.439(HKS)CE/JPR-II/d2005 dated 22.7.2005 passed by the Commissioner (Appeals), Central Excise, Jaipur.)

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? :
- 

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M.

M/s. Snowcem India Ltd.

Appellant.

Versus

CCE, Jaipur-II

Respondents

Appearance

Shri K.K. Sharma, Advocate for the appellants..

Shri S. Gautam, Authorised Departmental Representative (DR) for the respondent.

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

**Date of decision:4.12.2007.**

Final Order No. 121/08-SM(BR)

**Per P.K. Das:**

Heard both sides and perused the records.

2. The relevant facts of the case, in brief, are that by Notification No.6/2001 dated 1.3.2001, Rule 57-AB of the erstwhile Central Excise Rules was amended. Sub-Rule (1) of Rule 57AB allowed credit of duties specified under the Second Schedule to the Central Excise Rules (SED) paid on inputs. Sub-rule (1A) of Rule 57AB provides that notwithstanding anything contained in sub-rule (1), the manufacturer or producer of final products shall be allowed to take CENVAT credit of the duty paid on inputs lying in stock or in process or inputs contained in the final products lying in stock on the date on which any goods cease to be exempted goods or any goods become excisable. The adjudicating authority denied the credit on SAD lying in stock as on 20.2.2001 on the ground that the goods manufactured by the appellants were already dutiable goods. The Commissioner (Appeals) upheld the adjudication order.

3. Ld. Advocate on behalf of the appellant submits that there is no dispute that the inputs had suffered SAD and therefore, they are entitled to avail the credit. He further submits that the interpretation of the Rules by the authorities below raised a discrimination of the exempted goods and dutiable goods, which is not permissible in law. He also submits that the

demand is barred by limitation as the Superintendent of Central Excise in their visit on 17.1.2002 detected the credit and notice was issued on 31.1.2003, which is beyond the normal period of limitations. In this regard, he relied upon the decisions of the Tribunal in the case of Salem Cooperative Sugar Mills Ltd. Vs. CCE, Madurai [1999 (112) ELT 557 (Tribunal) and in the case of Himachal Futuristic Communication Ltd. Vs. CCE, Chandigarh [1997 (92) ELT 648 (Tribunal).

4. The ld. DR on behalf of the Revenue reiterates the findings of the Commissioner (Appeals). He submits that after the amendment of Section 11 A in the year 1995, the relevant date would be applicable on the date on which such return is so filed.

5. After hearing both the sides and on perusal of the records, I find that Rule 57AB (1A) provides utilization of the credit on the inputs lying in stock or in process or inputs contained in the final product lying in stock on the date on which any goods cease to be exempted goods or any goods become excisable. The contention of the ld. Advocate that the interpretation given by the authorities below is discriminatory since it places an existing assessee in a advantageous position vis a vis a new assessee. I do not find any discrimination in the Rule 57AB of the erstwhile Central Excise Rules, 1944 and, therefore, the contention of the ld. Advocate is not sustainable.

Regarding the demand of duty, it is barred by limitation. I find force in the submissions of the Id. DR that in terms of Section 11 A of the Central Excise Act, 1944 vide amendment w.e.f. 25.5.1995, the relevant date in the case of excisable goods on which duty of excise has not been levied or paid or has been short levied or short paid, where a periodical return is to be filed by the manufacturer the date on which such return is so filed. In the present case, appellant availed credit in the RG-23A Part-II ~~Return~~ and filed the Return. The appellants availed credit in the month of January, 2002 and the last date of filing the return is 10<sup>th</sup> Feb, 2002. Show cause notice was issued on 31.1.2003, which is within the time limit under Section 11 A of the Central Excise Act, 1944. Accordingly, I do not find any justification to interfere the order of the Commissioner (Appeals). The appeal filed by the appellant is rejected.

Order dictated & pronounced in open court on 4.12.2007.

( P.K. Das )  
Member (Judicial)

Ckp.