

**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/1949/2006-SM[BR]

Date 23/01/2008

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

To :  
M/S DECENT FOODS P LTD.  
606,G.T.ROAD,DADRI DISTT GAUTHAM BUDH  
NAGAR NOIDA (UP)

M/S DECENT FOODS P LTD.

Appellant

Vs

Respondent

CCE,GHAZIAVAD

I am directed to transmit herewith a certified copy of Final order No. 132/2008-SM[BR] dated 3.1.2008  
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944

  
Assistant Registrar  
(SM Appeal Branch)

**Copy to :**

1. Respondent  
CCE,GHAZIAVAD  
DO
2. Adv. / Consult SHRI. ABHISHEK JAJU ADV.  
R-163, II FLOOR GREATER KAILASH PART-1  
NEW DELHI-110048
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.1949/2006-SM

(Arising out of order in appeal No.24/CE/Gzb/06 dated 9.3.2006 passed by the Commissioner (Appeals), Customs & Central Excise, Ghaziabad)

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 Departmental authorities?

*Handwritten initials*

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M/s Decent Foods (P) Ltd

Appellant  
(Rep. by Shri Abhishek Jaju, Advocate)

Vs

CCE, Ghaziabad

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

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

Date of Hearing: 3.1.2007

*Final* Order No. 132/08-SM (BR)

Per P.K. Das:

Heard both sides and perused the record.

The Tribunal by Final order dated 19.1.2004 observed that when appellants have been denied SSI benefit and they have cleared the goods on

payment of duty, they are entitled to avail modvat credit on the inputs. In compliance of the order of the Tribunal, the Assistant Commissioner of Central Excise by letter dated 31.5.2004 allowed the modvat credit of Rs.88,104/- during the relevant period on the basis of the copy of the challan/statement on production of final product certified by the Chartered Accountant of the appellants. Subsequently, the Assistant Commissioner of Central Excise by letter dated 26<sup>th</sup> October, 2005 informed the appellants that the Assistant commissioner by letter dated 31.5.2004, directed the appellants to avail credit of Rs. 88,104/-. It is seen from the record that the appellants challenged the letter dated 26.10.2005 before the Commissioner (Appeals). By the impugned order, the Commissioner (Appeals) rejected their appeal.

I find that the Assistant Commissioner of Central Excise by letter dated 31.5.2004 allowed the credit to the appellants in compliance of the order of the Tribunal which was not challenged by the appellant and therefore, the appeal against the letter dated 26<sup>th</sup> October, 2005 of the Assistant Commissioner is not maintainable. I do not find any reason to interfere with the order of the Commissioner (Appeals). Accordingly, the appeal filed by the appellant is rejected.

(Order dictated and pronounced in the open Court).

MPS\*

(P.K. Das)  
Member(Judicial)