

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/1350/2006-SM[BR]

Date 28/01/2008

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

To :
M/S SPACK AUTOMOTIVES LTD.
SURAJPUR ROAD, GREATER NOIDA (UP)

M/S SPACK AUTOMOTIVES LTD.

C.C.E. NOIDA

Appellant
Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No.179/2008-SM[BR] dated 27.12.2007
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944


Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
C.C.E. NOIDA
B-123, SECTOR 5, NOIDA.
2. Adv. / Consult
MR.V. LAXMIKUMARAN
B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029
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, R.K. PURAM, W.B. NO.2, PRINCIPAL BENCH
NEW DELHI, COURT NO. III**

Excise Appeal No.E/1350 of 2006-SM (BR)

[Arising out of order in appeal No.157/CE/APPL/Noida/06 dated 20.1.2006
passed by the Commissioner of Central Excise, Noida]

Date of Hearing/ Decision: 27.12.2007

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? | : |

No.

M/s. Spack Automotives Ltd.

Appellants

[Rep. by Mr. Ravi Raghavan, Advocate]

Vs.

CCE, Noida

Respondent

[Rep. by Mr. Atul Rastogi, Authorized Representative (DR)]

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

Final Order NO. 179/08-SM(BR) /Dated: 27.12.2007

Per, P.K. Das:

The relevant facts of the case, in brief, are that the appellants are engaged in the manufacture of seat systems and components for automobiles classifiable under Heading 9401 of the Schedule to the Central Excise Tariff Act, 1985. It has been alleged in the show cause notice that on examination of the Balance Sheet, the auditors of AGUP, Allahabad had noticed that dies and moulds, during 2000-2001 and 1999-2000 had been scrapped as the automobile models in which they were to be used became obsolete and deleted and the value of the goods were written off in the balance sheet. The adjudicating authority confirmed the demand of duty and imposed penalty of equal amount along with interest on the ground that the nature of the said capital goods have been written off before use. The Commissioner (Appeals) upheld the adjudication order.

2. Ld. Advocate on behalf of the appellant submits that it is revealed from the show cause notice that the capital goods had been scrapped as the automobile models in which they were to be used became obsolete. He further submits that the capital goods are still in their factory premises and therefore, the demand is not sustainable. He relied upon the decision of the Tribunal in the case of Federal Mogul Automotive Products (I) P. Ltd. Vs. Commissioner of Central Excise, Jaipur - 2007 (212) ELT 158 (T-D). He

also submits that the demand is barred by limitation as there is no suppression of facts and demand was raised on the basis of balance sheet. He relied upon the decision of the Tribunal in the case of Kirloskar Oil Engines Ltd. Vs. Commissioner of Central Excise, Nasik – 2004 (178) ELT 998 (T-Mumbai). He categorically submits that the capital goods were used in the manufacture of finished goods and, therefore, the value was written off.

3. Ld. DR reiterates the findings of the Commissioner (Appeals). He submits that the adjudicating authority had given a specific finding that the capital goods have been written off before use and, therefore, the case laws relied upon by the Id. Advocate are not applicable herein. He further submits that the appellant did not disclose the facts of written off value in their books of accounts and extended period of limitation is correctly applicable.

4. After hearing both the sides and on perusal of the records, I find that the main contention of the Id. Advocate is that the capital goods in question have been used in the manufacture of final products and ^{there} ~~they~~ are still lying in the factory. The adjudicating authority observed that if the capital goods have not been used of its full life or span in the manufacture of finished good but withdrawn from use due to the reason that the model of finished goods for which it was being used has been withdrawn from

production or because the said model is not fetching the market. It appears that the adjudicating authority has not examined the statement of the appellant on the use of the capital goods, which are still lying in their factory. There is no provisions that if the capital goods have not been used for its full life can be treated as the same has not been used. The finding of the adjudicating authority is mere assumption of the facts. The Tribunal in the case of Federal Mogul Automotive Products (I) Pvt. Ltd. (supra) held that, value though written off, reversal of credit is not attracted. In the case of Bharat Electricals Ltd. Vs. CCE, Bangalore – 2002 (50) RLT 208 (CESAT-Bangalore), the Tribunal held that inputs are still lying in the factory though they have written off in books of accounts, credit cannot be denied on the presumption that inputs may not be used when there is no time limit for consumption. In the present case, there is no dispute that capital goods are still lying in the factory and, therefore, credit cannot be denied on the presumption that the capital goods were not used, as the full life time has not been elapsed. I find force in the submissions of the ld. Advocate. So, respectfully, following the decisions of the Tribunal in the case of M/s. Bharat Electricals Ltd. (supra), the demand of duty is set aside. As the issue involved on merit in favour of the appellant, the appeal is disposed of

without going into the other points. The impugned order is set aside and the appeal is allowed with consequential relief.

Order dictated & pronounced in open court on 27.12.2007.

(P.K. Das)
Member (Judicial)

Ckp.