

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**  
**PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066**  
**SINGLE MEMBER APPEAL BRANCH**

Date 20/02/2008

Appeal No. E/731 /2006-SM [BR]

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

To :  
M/S AIR LIQUIDE NORTH INDIA P LTD.  
125,M.I.AREA ALWAR(RAJ)

M/S AIR LIQUIDE NORTH INDIA P LTD.

CCE,JAIPUR

Appellant  
Vs  
Respondent

I am directed to transmit herewith a certified copy of Final order No. 317 /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

NCR BUILDING,STATUE CIRCLE,C-SCHEME JAIPUR

2. Adv. / Consult

MR. RAVI RAGHVAN ADV.

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

15. Guard file

  
Assistant Registrar  
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX  
APPELLATE TRIBUNAL, NEW DELHI  
PRINCIPAL BENCH, NEW DELHI  
COURT NO. II

**Excise Appeal No. 731 of 2006-Ex. (SM)**

(Arising out of Order-in-Appeal No. 443(MPM)CE/JPR-I/2005 dated 18.11.05 passed by the Commissioner (Appeals), Customs & Central Excise, Jaipur)

For approval and signature

HON'BLE MR. S.S. KANG, VICE PRESIDENT

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 would 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 Air Liquide North India Pvt. Ltd.

Appellant

Vs.

CCE, Jaipur

Respondent

Appearance:

Shri Ravi Raghvan, Advocate

- For appellant

Shri B.S. Suhad, SDR

- For respondent

CORAM:

HON'BLE MR. S.S. KANG, VICE PRESIDENT

Date of Hearing: 4.12.07

Final Order No. 317/O.E.-S.M.(B.R) .....dated 4.12.07

Per S.S. Kang:

Heard both sides.

2. The appellant filed this appeal against the impugned order whereby credit of duty was denied on the ground that

● the appellant failed to show receipt of inputs in the factory of manufacture.

3. The contention of the appellant is that they are engaged in the manufacture of industrial gases, oxygen, nitrogen, carbon dioxide etc. The appellant received certain quantity of liquid argon gas from their trading unit under the valid duty paying documents and availed the credit. Show-cause notice was issued denying credit in respect of this quantity of inputs on the ground that the inputs were not received by the appellant in the factory of production. The contention is that lower authority denied the credit on the ground that appellant failed to show the receipt of the inputs in the factory.

4. The contention is that as per the statutory record maintained in respect of the duty paid inputs such as RG-23 Part-I and II, the quantity of inputs were shown to be received in the factory and the same inputs were issued and the final product which was cleared on payment of duty and this record was produced before the lower authority and the lower authority ignored this record. The contention is that

● the appellant also produced the record by way of material receipt memo regarding receipt of the inputs and the same were not accepted by the lower authority on the ground that the same is afterthought.

5. The appellant submitted that they filed written submissions dated 22.7.2005 before Commissioner (Appeals) showing the stock position of the inputs in the factory and receipt of the duty paid inputs from various resources. On the basis of the quantities received as shown in the RG-23 Part-I record the same quantity as transferred from their other unit but without considering the same demand was confirmed. The contention is that as the inputs received in the factory entered in the statutory record and used in the manufacture of excisable goods which were cleared on payment of duty, therefore, the credit cannot be denied.

6. The Revenue submitted that onus is on the appellant to show that inputs were received in the factory as per gate register maintained by the appellant there is no entry

● regarding receipt of the consignments in question. The appellant has also not produced any other material evidence to show that the inputs were received in the factory, therefore, the demand was rightly made.

7. I find that the appellant received certain quantity of inputs by way of transfer from their trading unit which were cleared on payment of duty. In respect of the units which were working under the Modvat Scheme statutory record prescribed under the rules is RG-23 Part-I is in respect of the quantities of inputs received in the factory, and RG-23 Part-II is in respect of credit taken in respect of inputs received in the factory. In these records, the quantities in question were shown as received in the factory and the same were subsequently issued for manufacture of goods which were cleared on payment of duty. In absence of any evidence that the same quantity was received by the appellant from some other sources it cannot be held that the appellant had not received such quantities, as the same quantities are used in the manufacture of goods. In these circumstances,

- the impugned order is set aside and the appeal is allowed.  
The appellants are entitled for consequential relief, if any in accordance with law.

(Dictated & pronounced in open Court)

(S.S. KANG)  
VICE PRESIDENT

RM