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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/134 /2007-SM[BR]& MISC/ 139 /2008-SM[BR] Date 31/03/2008

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

To :
M/S RUPTEX MINERAL WATER PVT LTD
G-974, RIICO INDUSTRIAL AREA, BHIWADI.

M/S RUPTEX MINERAL WATER PVT LTD — Appellant
Vs
C.C.E.JAIPUR — Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 515 /2008 –SM[BR]& M/103 /2008-SM dated 7.3.2008 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.JAIPUR
   NCRB, STATUE CIRCLE, C-SCHEME, JAIPUR.
2. Adv. / Consult
   MR. ATUL GUPTA C.S.
   B- 1/ 1289-A, VASANT KUNJ NEW DELHI-110070
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 Publictions (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 Misc. Application No. 139 of 2008 & Excise Appeal No. 134 of 2007 –SM (BR)

(Arising out of Order-in-Appeal No. 287(GRM)/CE/JPR-I/2006 dated 7.12.2006 passed by the Commissioner, (Appeals), 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?**	No
2.	**Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?**	No
3.	**Whether their Lordships wish to see the fair copy of the order?**	Yes
4.	**Whether order is to be circulated to the Departmental authorities.**	No

M/s Ruptex Mineral Water Pvt. Ltd. Appellant

Vs.

CCE, Jaipur Respondent

Appearance :
Shri Atul Gupta, C.S. - For appellant
Shri V.K. Agarwal, DR - For respondent

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

M.o-No. 163/08-SM(BR) Date of Hearing: 7.3.2008

Final Order No. 515/08-SM(BR) dated 7.3.08

Per S.S. Kang:

Heard both sides. Misc. application is for extension of the stay order. As the appeal is listed for hearing, therefore, the Misc. application is dismissed as infructuous.

2. The appellant filed this appeal against the impugned order whereby benefit of credit was disallowed and penalty was imposed on the ground that manufacturer has wrongly cleared the goods in terms of Sl. No. 3 of the table to Notification No. 23/2003-CE dated 31.3.2003.

3. The contention of the Revenue is that the manufacturer is liable to pay duty payable in terms of Sl. No. 2 of the table to Notification No. 23/2003-CE. The contention of the Revenue is that as the manufacturer has paid higher duty as payable at Sl. No. 3 of the table, therefore, the present appellant who is recipient of the inputs wrongly taken credit of the duty paid in terms of Sl. No. 3 of the table to the notification.

4. The contention of the appellant is that they are recipient of the input which are dutiable inputs and further used in the excisable goods. The appellant being recipient of the inputs had taken credit as per invoice issued by the manufacturer. The contention is that the inputs cannot be reassessed to duty at recipient end. The appellant relied upon the decision

of Hon'ble Supreme Court in the case of **Sarvesh Refractories (P) Ltd. Vs. CCE** reported in 2007 (218) ELT 488.

5. The contention of the Revenue is that the manufacturer who is supplier of inputs wrongly paid duty at the time of clearance of the goods payable in terms of Sl. No. 3 of the table whereas actual duty payable is in terms of Sl. No. 2 of the table to the notification, therefore, appellant, recipient of the inputs has taken the credit of duty which is not admissible.

6. Undisputed facts of the case are that the appellants are recipient of inputs which are further used in the manufacture of excisable goods. The appellant availed the credit whatever duty has been paid by the manufacturer. The manufacturer of inputs paid duty under Notification No. 23/2003-CE. Now, the Revenue is only raising dispute that the supplier of inputs i.e. manufacturer has wrongly paid duty as payable at Sl. No. 3 of the notification whereas the duty actually is to be paid as payable Sl. No. 2 of the notification. It is settled law that the assessment cannot be reopened at recipient end, therefore, whatever the duty paid on the inputs

by the manufacturer is accepted by the Revenue, the appellant being recipient of inputs has availed the same. In view of this, the impugned order is set aside and appeal is allowed.

(Dictated & pronounced in open Court)

(S.S. KANG)
VICE PRESIDENT

RM