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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/1133/2006 – SM[BR] Date 19/11/2008

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

To :
C.C.E BHOPAL

HOSHANGABAD ROAD, 48, ADMINISTRATIVE
AREA, AREA HILLS, BHOPAL (M.P.) 462011

C.C.E BHOPAL — Appellant

Vs

M/S M.P. POLYPROPYLENE LTD. — Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1479 / 2008- SM[BR] dated 14.11.2008

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent

M/S M.P. POLYPROPYLENE LTD.

26/6 KM. NEAR BHOJPUR TEMPLE, P.O. BHOJPUR, DIST. RAISEN M.P.

2. Adv. / Consult SHRI K.L. MISHRA ADV.

N/V;--------------------

3 S.D.R
4 ~~J.C.D.R.~~
5 Bar association. CESTAT. New Delhi
6 M/s. Deeparchi Publications. M-93. Marg. 46. Saket. New Delhi 110017
7 M/s Centax Publictions (P) Ltd.. 1512-B. Bhishm Pitamah marg. Opp. ICICI Bank of Defence Colony. New - 3
8 Excise & Customs cases. B-37. Sector -1. NOIDA - 201301 Gautam Budh Nagar. (U.P.)
9 Raghuraman's 44-B. Regal Flat.Shipra Suncity. Indirapuram - 201010.Ghaziabad. DT. U.P.
10 Nidheshak publications. I.P.Estate. new Delhi
11 Taxmann Allied Service Pvt Ltd.. 21/35. West Punjabi Bagh. New Delhi - 110026
12 Commercial Laws of India Pvt Ltd Post Bag No. 1033. No.70(Old No. 88). Thyagaraya Road. T. Nagar.Chennai
13 Taxindiaonline.com Pvt.Ltd. B-XI/8183.Vasant Kunj. New Delhi - 110070
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-1
15 Office Copy
16 Guard file

Assistant Registrar

(SM Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-III

Date of hearing/decision:14.11.2008

Central Excise Appeal No.1133 of 2006-SM

Arising out of the order in appeal No.206-CE/BPL/2005 dated 28.12.2005 passed by the Commissioner (Appeals), Customs & Central Excise, Bhopal.

For Approval and Signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2	Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	yes
3	Whether their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

Appellant		Respondent
C.C. & C.Ex., Bhopal	vs.	M/s M.P. Polypropylene Ltd.

Appearance:

Shri R.K. Saini, Authorized Departmental Representative (DR) for the Revenue and Shri K.L. Mishra, Advocate for the respondent

Coram: Hon'ble Mr. M. Veeraiyan, Member (Technical)

Final Order No. 1479/08-SM (BR)

Per M. Veeraiyan:

This is an appeal by the Department against the order of the Commissioner (Appeals) No. 206-CE/BPL/2005 dated 28.12.2005.

2. Heard both sides.

3. The respondent is a manufacturer of BOPP films. They used Evaporator Boats (known also as PITS). Evaporator boat is nothing but a cavity in which electrically resistance heats it to 1500 ^{0} C under

vacuum condition (10 mbr). It is used for coating aluminium metallization on polymeric film, paper or various individual items such as TV picture tube faces.

4. The party initially has claimed this item as input and the said claim was rejected by the Department. During the disputed period, the respondent has claimed the said item as capital goods and availed Cenvat credit. The original authority held that the credit was not admissible and the credit of Rs.3,00,913/- was ordered to be recovered along with interest. He also imposed penalty of Rs.10,000/-.

5. However, the Commissioner (Appeals) held the impugned goods as classifiable under heading 84.19 and therefore, held that the same is eligible for Cenvat credit as capital goods.

6. Learned DR relies on the decision of the Five Member Bench in the case of Melton India Ltd. vs. C.C.E., Meerut reported in 2000 (121) ELT 701 (Tri-LB) wherein the evaporator boat had been held as not an input and therefore, cannot take Cenvat credit as input. The said decision strengthens the views of the respondent. It has been clearly held to be not an input. The Commissioner (Appeals) has also held the same as capital goods. The findings of the Commissioner (Appeals) are reproduced below:

> *"5. I have gone through the grounds of appeal, submissions in the appeal memorandum and all other evidence on record. The short question for decision is whether Evaporator Boat, on which credit has been availed by the appellants are capital goods or not. In this regard, firstly the goods have to be classified before this question can be answered. Such goods cannot be considered as refractory as seen from the copy of the leaflet enclosed by the appellants. Evaporator Boat is nothing but a cavity in which electrically resistance heats it to 1500 ^{0} C under vacuum condition condition (10 mbr). It is used for coating aluminium metallization on polymeric film, paper or various individual items such as TV picture tube faces. When this Boat is heated, aluminium is fed which at high temperature*

and at extreme low pressure evaporates. The evaporated aluminium vapours then get cooled and settled.

6. The appellants have stated that the goods should be classified under heading 84.19 relates to machinery, plant or refractory equipment, whether or not electrically heated for the treatment of material by the process including evaporating/vaporizing. It appears that this description of tariff covers the goods , namely, evaporation boats. Since the goods are classifiable under Chapter 84, therefore, Cenvat credit availed by the appellants as capital goods is within the purview of the definition as given under the Cenvat Credit Rules, 2002."

7. Thus, as it is not an input as held by the Tribunal, the decision of the Commissioner (Appeals) in holding the same as capital goods cannot be faulted with.

8. The appeal by the Department is, therefore, rejected.

(Dictated and pronounced in the open Court)

(M. Veeraiyan)
Member (Technical)

scd/