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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/3724/2006-SM[BR]WITH E/ CROSS/ 22/2007-SM[BR]   Date 28/07/2008

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

To :
C.C.E. CHANDIGARH
PLOT NO 19, SECTOR 17-C, CHANDIGARH.

C.C.E. CHANDIGARH   Appellant
Vs
M/S GEE EMM POLYVIN LTD   Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1083 /2008 –SM[BR] dated 4.7.2008 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 GEE EMM POLYVIN LTD
   BHAWANJGARH ROAD, FOCAL POINT GAJEWAS, SAMANA, DISTT-PATIALA(PB)
2. Adv. / Consult SHRI J. MOGAN, CONSULTANT
   M/S RESPONDENT;------------
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 Delhi -
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 60017
13. Taxindiaonline.com Pvt.Ltd, 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,
West Block No.2, R.K Puram, New Delhi-110066

COURT-IV

Date of hearing: 04.7.2008

Central Excise Appeal No. 3724/2006-SM(BR) with Cross/ 22/2007

[Arising out of the order-in-Appeal No. 792/CE/CHD/2006 dated 29.8.2006 passed by the Commissioner (A) Central Excise, Chandigarh]

For Approval and Signature:

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

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

C.C.E. Chandigarh — Appellants/Applicant
vs.
M/s Gee Emm Polyvin Limited — Respondent

Appearance:

Shri S. Gautam, DR for the Appellant
Shri J. Mohan, Consultant

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

Final Order No. 1083/08-SM(BR)

Per: P.K. Das:

Heard both sides and perused the records.

2. The Respondent availed cenvat credit of Rs. 65,517.00 at the time of receipt of the capital goods Diesel Generator 140 KVA vide invoice number 1086 dated 06.6.2001. They used Diesel Generator in their factory

and the used Generator was sold by them under invoice No. 374 dated 13.01.2004. ~~On~~ on payment of duty of Rs. 26,400.00. It has been alleged in the show cause notice that the Respondent is liable to pay the ~~interest~~ duty equivalent to the cenvat credit originally availed by them in terms of sub rule (4) of Rule 3 of the CENVAT Credit Rules, 2002 . The Adjudicating Authority droped the proceeding. Revenue filed the appeal before Commissioner (Appeals), which has been rejected. I find that the Commissioner (Appeals) passed the order following the decision of the Tribunal in the case of Madura Coats Private Limited Vs. Commissioner of Central Excise, Tirnelveli, as 2005 (190) ELT 450 (Tri-Bang). It has been held that no demand is sustainable in absence of any provision to demand duty on removal of used cenvated capital goods. There is no dispute that the respondent cleared old and used capital goods, The Ld. DR submits that the department has not accepted the decision of the Tribunal in the case of Madura Coats Private Limited (Supra) and Revenue filed appeal before the Hon'ble Madras High Court.

3. In view of the decision of the Tribunal and considering the facts of the case, I do not find merit in the appeal of the Revenue. Accordingly, appeal filed by the Revenue is rejected.

Cross objection filed by the respondent is disposed of.

(Dictated and pronounced in the open court.)

(P.K. Das)
Member (Judicial)

K. Gupta