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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/669 /2007 – SM [BR] Date 01/12/2008

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

To :
C.C.E, INDORE
MANIK BAGH PLACE, POST BOX NO.10, INDORE-
452001 (M.P.)

C.C.E, INDORE Appellant

Vs

SAMRIA PROCESSING CO. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1553 / 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

SAMRIA PROCESSING CO.

21/2, SECTOR-F, INDUSTRIAL AREA, SANWER ROAD, INDORE (M.P.)

2. Adv. / Consult

NONE

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
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Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

COURT NO.III

Excise appeal No. 669/2007 -SM

(Arising out of order-in-original No. IND-I/372/2006 dated 19.12.2006 passed by the Asst. Commissioner (Appeals-I), Customs & Central Excise, Indore)

For approval and signature:

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

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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 ?

No.

4. Whether Order is to be circulated to the Departmental authorities?

Yes.

CCE, Indore — Appellant

Reptd. By Shri R.K. Verma, D.R.

Versus

M/s. Samaria Processing Company — Respondent

None

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

Date of Hearing/Date of decision: .14.11.08

Final **Order No. 1553 /2008-SM(BR)**

Per P.K. Das:

The relevant facts of the case, in brief, are that the respondent is engaged in the manufacture of textile and textile articles classifiable under heading 52.07 of the Schedule to the Central Excise Act, 1985. It has been alleged that the respondent availed irregular credit on Dyes and Chemicals without having proper duty paying documents amounting to Rs. 1,92,202/-. The adjudicating authority confirmed the demand of duty of Rs. 1,92,202/- and imposed penalty of equal amount along with interest. The respondent contested the demand of duty on merit and on limitation before the Commissioner (Appeals). The Commissioner (Appeals) set aside the adjudication order. Hence, Revenue filed this appeal.

2. After hearing both sides and on perusal of the record, it is seen that the Commissioner (Appeals) set aside the adjudication order mainly on the ground of limitation. The relevant portion of the order of the Commissioner (Appeals) is reproduced below:-

"In the said declaration, the Appellants have clearly stated that they have taken credit as per Trade Notice No. 14/2003-CEx dated 26.03.2003 and if any discrepancy is found in the matter, the same may be informed to them to rectify it. Further, it is seen that with reference to the stock of chemicals lying in the factory as on 31.03.2003, they have given a complete list showing the quantity, rate and the amount involved and have availed credit of 16% with reference to the value of Rs. 12.01 lakhs shown by them. It is also seen that prior to 01.04.2003, there was a deemed Credit facility as per Notification No. 06/2002-CE(NT) and, therefore the question of taking any credit based on duty paying documents in respect of Dyes & Chemicals prior to 01.04.2003 does not arise and therefore the presumption of the Appellants that as per the trade notice No. 14/2003, they would be entitled to taken credit at 16% with reference to the value of Dyes & Chemicals lying in their factory as on 31.03.2003 appears to be quite reasonable. Therefore in the facts and circumstances of the case it cannot be alleged that the Appellants have availed the credit in respect of Dyes & Chemicals in an improper manner with intent to evade duty and therefore the demand is clearly time barred as argued by the Appellants. The argument of the Adjudicating Authority that the Appellants nowhere declared that they do not posses any duty paying documents in support of the credit taken on Dyes & Chemicals and, therefore they have willfully suppressed the vital fact of not having any duty paying documents with a clear intent to avail/utilize Cenvat credit to evade payment of duty cannot be accepted in the facts and circumstances of the case where a complete declaration has been filed by the Appellants regarding the stock of Dyes & Chemicals lying with them as on 31.03.2003. In my opinion, based on the declaration of the Appellants, if the department felt that the credit taken on the Dyes & Chemicals may not be correct, then they should have looked into the matter and issued a S.C.N. for recovery of credit taken wrongly, within the normal period of one year. However, in this case the notice for the recovery of the credit has been issued only in 2006 and therefore, the credit taken in April 2003 cannot be demanded/recovered under such a notice."

3. In view of the above finding of the Commissioner (Appeals), I do not find any reason to interfere with the order of the Commissioner (Appeals). Accordingly, appeal filed by the Revenue is rejected.

(Operative part of the order pronounced in the Open Court.)

(P.K. DAS)
MEMBER (JUDICIAL)

Dated 19.11.2008

RK