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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/427 /2007 – SM[BR] Date 01/12/2008

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

To :
C.C.E. LUDHIANA
F BLOCK, RISHI NAGAR, LUDHIANA

C.C.E. LUDHIANA Appellant

Vs

M/S MANISHA SPINNING MILLS (P) LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1555 / 2008- **SM[BR]** dated 26.11.2008 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 MANISHA SPINNING MILLS (P) LTD.
   164, INDL. AREA, LUDHIANA
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
15 Office Copy
16 Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, R.K. PURAM, W.B. NO.2, PRINCIPAL BENCH NEW DELHI, COURT NO.I

Excise Appeal No. 427 of 2007-SM
[Arising out of Order-in-Appeal No. 76/CE/Appl/LDH/06 dated 24.10.2006 passed by the Commissioner (Appeals) Customs & Central Excise, Chandigarh]

Date of Hearing/Decision : 26.11.2008

For approval and signature:

Hon'ble Ms. Jyoti Balasundaram, 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 should be released under Rule 27 of the 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

CCE, Ludhiana — Appellant

Vs.

M/s Manish Spinning Mills (P) Ltd., — Respondent

Appearance:

Mr. S.K. Panda, Jt. CDR for the appellant
None for the respondent

CORAM: Ms. Jyoti Balasundaram, Vice President

Final **Order** No. 1555/08-SM (BR)

Per Jyoti Balasundaram:

The brief facts of the case are that the respondents had shown in their ER-1 return for the month of March 2003 that a quantity of 13,861 Kgs. of finished goods involving Central Excise duty of Rs.1,29,650/- was burnt in fire on 18.03.2003, but could not produce any order for remission of duty from the competent authority. They, however, intimated that they had applied for remission to the Commissioner on 07.05.2003 and that the goods lost in fire also included

3047 kgs. of goods in process involving duty of Rs. 23,127/-. Show cause notice dated 15.3.2004 proposing recovery of the above two amounts was issued; the demands were confirmed by the Order-in-Original dated 17.12.2004; the appellants filed an appeal before the Commissioner (Appeals), Ludhiana who vide his order dated 23.12.2005 set aside the demand of Rs. 1,46,984/- for the reason that remission of this amount of duty involved on finished goods destroyed in fire had been allowed. The balance amount of Rs. 5,793/- was upheld by the Commissioner (Appeals). Claim for refund of Rs. 1,46,984/- was filed by the respondents on 02.02.2006 which was disposed of by the Assistant Commissioner, Ludhiana by way of sanction in the form of cenvat credit. The Commissioner (Appeals) accepted the plea of the assessees that they were entitled to refund in cash; hence this appeal by the Revenue.

2. The respondents have asked for a decision on merit hence I heard the learned DR for the appellant and perused the record.

3. I find that in the case of Slovak India Trading Co. Pvt. Ltd., vs. CCE, Bangalore -2006 (205) ELT 956 (Tri. Bang.) the Tribunal has held that when assessee goes out of modvat scheme or when company is closed, refund claim can be made in cash and the Tribunal's order has been upheld by the Hon'ble High Court of Karnataka as seen from 2006 (201) ELT 559 (Kar.), holding that Rule 5 of the Cenvat Credit Rules, 2002 does not expressly prohibit refund of unutilized credit when there was no manufacture due to closure of factory. In the present case, the respondents have closed factory and surrendered their excise license and therefore the ratio of Slovak India Trading Co. Pvt. Ltd., applies on all fours. Following the ratio thereof, I uphold the impugned order and reject the appeal.

[Dictated and pronounced in the open Court]

[Jyoti Balasundaram]
Vice President

[Pant]