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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/783 /2007 – SM[BR] WITH C.O.NO.162/2007 Date 22/12/2008

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

To :
C.C.E, RAIPUR
CENTRAL EXCISE BUILDING, DHAMTARI ROAD,
TIKRAPARA, RAIPUR-492001

C.C.E, RAIPUR Appellant
Vs
VISHNU CHEMICALS PVT. LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.**1614 / 2008- **SM[BR]** dated 10.12.2008

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

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
   VISHNU CHEMICALS PVT. LTD.
   18-26, INDUSTRIAL ESTATE, BHILAI, DURG (CG.)
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)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. IV

Excise Appeal No. 783 of 07 with C.O. No. 162 of 07 (SM)

[Arising out of the Order-in-Appeal No. 02/RPR-II/2007 dated 11/01/2007 passed by The Commissioner (Appeals-I), Customs & Central Excise, Raipur.]

For Approval and signature :
Hon'ble Shri Rakesh Kumar, Member (Technical)

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 would 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?	:
4.	Whether order is to be circulated to the Department Authorities?	:

CCE, Raipur — Appellant

Versus

M/s Vishnu Chemicals P. Ltd. — Respondent

Appearance

Shri S. Gautam, Authorized Representative (DR) – for the appellant.

None – for the respondent.

CORAM : **Hon'ble Shri Rakesh Kumar, Member (Technical)**

DATE OF HEARING : 10/12/2008.

Final Order No. 614/08-SM(PB) Dated : 10.12.08

Per. Rakesh Kumar :-

The Respondent engaged in manufacture of excisable goods falling under Chapter 28 & 29 of the Central Excise Tariff, in their factory received soda ash from their manufacturing unit situated at Hyderabad and availed Cenvat credit amounting to Rs. 7,32,354/-. The Revenue seeks to deny this credit invoking the provisions of Rule 57AE of the erstwhile Central Excise Rules, 1944 and Rule 7 (4) of the erstwhile Cenvat Credit Rules 2001/2002 on the ground that the soda ash received by the Appellant in their unit at Bhillai from their Hyderabad unit has not been purchased. Additional Commissioner vide order-in-original dated 06/10/06 confirmed the Cenvat credit demand of Rs. 7,32,354/- alongwith interest and beside this imposed penalty of equal amount under Section 11AC. The Respondent filed an appeal before the Commissioner (Appeal) against this order and Commissioner (Appeal) vide the impugned order dated

11/01/07 set aside the Additional Commissioner's order, against which the Revenue has come in appeal before this Tribunal.

2. None appeared for the Respondent. The matter, therefore, is being decided after hearing the Departmental Representative. The learned Departmental Representative pleaded that from a reading of Rule 57 AE (3) of Central Excise Rules, 1944 upto June 2001 and thereafter Rule 7 (4) of the Cenvat Credit Rules, 2001/2002, it is clear that Cenvat credit is available only in respect of those duty paid inputs which have been acquired by a manufacturer by purchase and it is not available if the inputs have been received on stock transfer basis.

3. I have carefully considered the submissions of the learned Departmental Representative and have also perused the records. The Respondent has a plant in Bhillai for manufacture of chemicals falling under Chapter 28 and 29 and they received soda ash from their plant at Hyderabad. The Revenue seeks to deny Cenvat credit on the ground that the inputs received as soda ash have not been purchased and,

therefore, in terms of Rule 57 AE (3) Cenvat credit will not be available. I do not agree with this contention of the learned Departmental Representative. The relevant provision governing the Cenvat credit during the period of dispute was Rule 57 AB of Central Excise Rule, 1944 and corresponding provision in the Cenvat credit Rules, 2001/2002, according to which a manufacturer or producer of final product shall be allowed to take credit of the duty of excise specified in 1st Schedule to Central Excise Tariff Act, duty of excise specified in second schedule to the Central Excise Tariff Act. Additional duty of excise leviable Section 3 of Additional Duties of Excise [Textile and Textile Articles] Act, Additional Excise duty, leviable under Additional Duties of Excise (Goods of Special Importance) Act, 1957 and additional custom duty leviable under Section 3 of the Customs Act, 1975, paid on any inputs or capital goods received in the factory. There is nothing in this Rule which says that the inputs have to be received by the way of purchase. Rule 57 AE (3), which has been invoked by the Revenue mentions that the manufacturer of final product has to maintain proper records for receipt, disposal, consumption and inventory of the inputs and capital goods in which the relevant information regarding the value, duty paid, the person from whom the inputs or capital goods has been purchased has been recorded and the burden of proof regarding the admissibility of Cenvat credit shall lie on the manufacturer taking such credit. This provision is with regard to the maintenance of the records of receipt, disposal and consumption of the inputs and capital goods purchased, in respect of which Cenvat credit has been taken from the use of the word – "purchase", in this Rule, it cannot be concluded that the inputs or capital goods have to be acquired by a manufacture only by purchase, for taking the Cenvat credit. There is no such condition in Rule 57 AB of Central Excise Rules, 1944 and corresponding provisions of Cenvat Credit Rules 2001/2002. Therefore I do not find any infirmity in the impugned order. The Revenue's appeal is dismissed.

(Dictated and pronounced in open court.)

(Rakesh Kumar)
Member (Technical)

PK