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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/1293/2007 – SM[BR] Date 02/01/2009

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

To :
C.C.E. JAIPUR I
N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME,
JAIPUR 302005.

C.C.E. JAIPUR I — Appellant
Vs
M/S MEDICAMEN BIOTECH LTD. — Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1628 / 2008 - **SM[BR]** dated **17.12.2008**

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

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
M/S MEDICAMEN BIOTECH LTD.
SP-1192, A&B, PHASE-IV, INDUSTRIAL AREA, BHIWADI (RAJASTHAN)
2. Adv. / Consult SHRI R.K. PHILLIPS ADV.
UG-3. PRAGATI TOWER, 26, RAJENDRA PLACE
NEW DELHI-110008

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. 1293 of 2007 (SM)

[Arising out of the Order-in-Appeal No. 48 (GRM) CE/JPR-I/ 2007 dated 27/02/2007 passed by The Commissioner (Appeals-I), Central Excise, Jaipur.]

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, Jaipur – I — Appellant

Versus

M/s Medicamen Biotech Ltd. — Respondent

Appearance

Shri R.K. Verma, Authorized Representative (DR) – for the appellant.

Shri R.K. Phillips, Advocate – for the respondent.

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

DATE OF HEARING : 17/12/2008.

Final Order No. 1628/08-SM(BR) Dated : 17.12.08

Per. Rakesh Kumar :-

The issue involved in this appeal of the Revenue is as to whether the Respondents, who manufacture pharmaceutical products and used duty paid laminated plastic films for packing the same, are eligible for Cenvat credit of duty on the laminated plastic films, paid by the manufacturers of laminated plastic films. The Revenue is of the view that since as per the judgment of Hon'ble Surpeme Court in case of **Metlex (I) Pvt. Ltd. vs. CCE, New Delhi** reported in **2004 (165) E.L.T. – 129 (S.C.)**, the lamination of plastic films does not amount to manufacture, any amount paid as Central Excise Duty on this activity cannot be treated as duty and, hence, the Respondent using such laminated films for use in the manufacture of their final product, would not be eligible for its Cenvat credit.

2. Heard both the sides.

2.1 The learned Departmental Representative pleaded that when the process of making laminated plastic films does not amount to manufacture, any amount paid by the manufacturer of laminated plastic films towards Central Excise Duty, cannot be considered as Central Excise Duty and, hence, its Cenvat credit would not be available to the Respondent as Cenvat credit can be taken only of the amount which is Central Excise Duty and not of the amount which is not Central Excise Duty.

2.2 Shri R.K. Phillips, Advocate, the learned Counsel for the Respondent pleaded that so long as the payment of duty on the inputs and the receipt of the inputs by the manufacturer is not questioned, the Cenvat credit cannot be denied and that Cenvat credit cannot be denied by reopening the assessment of duty on the inputs, at the receiver's end. In this regard, he relied upon the Tribunal's judgment in the cases of **CCE, Hyderabad vs. Tube Investments of India Ltd.** reported in **2004 (176) E.L.T. 363 (Tri. – Bang.)** and **Eveready Industries (I) Ltd. vs. CCE, Allahabad** reported in **1998 (103) E.L.T. 672 (Tribunal)**, wherein it was held that once duty paid inputs have been received by manufacturer, Modvat credit cannot be denied on the ground that such inputs were not liable for duty and if any action for wrong payment of duty on the inputs required to be taken, it should be taken at the place where the duty was paid.

3. I have carefully considered the submissions from both the sides. The Respondent manufacture medicines and received

plastic laminates for use in the packing of the same. The Revenue seeks to deny the Cenvat credit on the ground that manufacturing plastic laminates by laminating the plastic films, as per the judgment of Hon'ble Supreme Court in the case of Metlex (I) Pvt. Ltd. (Supra), does not amount to manufacture and, therefore, what the manufacturers of the plastic laminate have paid is not Central Excise Duty. I find that the issue involved in this case is squarely covered by the judgments of this Tribunal in the cases of CCE, Hyderabad vs. Tube Investments of India Ltd. (Supra) and Eveready Industries (I) Ltd. vs. CCE, Allahabad (Supra), wherein it was held once duty paid, goods are received, Modvat credit cannot be denied on the ground that such inputs were not liable for duty. Moreover, Cenvat credit can be denied only when the duty paid has been refunded to the manufacturer and in this case, there is no such plea of the Revenue. In view of this, the Revenue's appeal is dismissed.

(Dictated and pronounced in open court.)

(Rakesh Kumar)
Member (Technical)

PK