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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/3615/2006-SM[BR] Date 04/04/2008

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

To :
M/S SUDARSHAN CABLES INDUS
F-25,INDUSTRIAL ESTATE, NAINI, ALLAHABAD.

M/S SUDARSHAN CABLES INDUS Appellant

Vs

C.C.E.ALLAHABAD Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 559 /2008 –SM[BR] dated 26.3.2008

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

Assistant Registrar

(SM Appeal Branch)

Copy to :

1. Respondent
   C.C.E.ALLAHABAD
   38,M.G. MARG, CIVIL LINES, ALLAHABAD.
2. Adv. / Consult
   MR.S.P. OJHA
   299, BAGHAMBARI HOUSING SCHEME, ALLAHPUR, ALLAHABAD, (UP)
3. S.D.R.
4. ~~J.C.D.R.~~
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, marg. 43, saket, New
7. M/s Centax Publictions (P) Ltd., 1512-E, Bhishm Pitamah
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301
9. R.Venkatraman Constt. 44-B, S.Suncity, Ghaziabad -
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh,
12. Co, Law Institution
13. TAX INDIA, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R.K.Puram, New Delhi-110066.
Principal Bench, New Delhi.
E/3615/06-SM

[Arising out of Order-in-Appeal No.95/CE/Alld/2006 Dt.23.8.06 passed by the Commissioner(Appeals), Allahabad)

For approval and signature:

Hon'ble Mr. P.K.DAS, MEMBER JUDICIAL

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 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:	:	

M/s. Sudarshan Cables Inds. Appellant

Versus

CCE, Allahabad Respondent

Appearance

Sh. S.P.Ojha, Consultant For Appellant

Sh. S.Gautam, Authorised Representative(DR) For Respondent

Coram: Hon'ble Mr. P.K.DAS, MEMBER JUDICIAL

Date of Hearing 26.3.08
Final Order No. 559/2008-SM(BR)

Per P.K.Das:

Heard both sides and perused the records.

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2. The appellant filed this appeal against imposition of penalty under Rule 15 of Cenvat Credit Rules,2004. It has been alleged that the appellant did not reverse the credit on the inputs, process inputs and inputs in finished goods from their credit balance before switching over to SSI exemption as required under sub-Rule 2 of the Rule 11 of Cenvat Credit Rules,2004.

3. I find that the Larger Bench of the Tribunal in the case of Ashok Iron & Steel Fabricators vs CCE reported in 2002(140)ELT.277 decided in favour of the appellant, but the Tribunal in the case of Albert David Ltd. vs CCE,Meerut reported in 2003(151)ELT.443 decided in favour of the Revenue. This issue has been referred to the Larger Bench by the Tribunal in the case of HMT Ltd. & Others vs CCE, Panchkula/Faridabad vide Misc. Order No.123/08-Ex. Dt.30.1.08. In any event, the appellant is not disputing the payment of duty. Therefore, as the matter is pending before the Larger Bench, the penalty is not justified. Accordingly, penalty is set aside and the appeal is allowed with consequential relief.

Order dictated in the open Court.

(P.K.Das)
Member Judicial

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