TELEGRAM : CEGCANAL
Website :-www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

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/857 /2006-SM[BR] Date 10/04/2008

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

To :
M/S BIRLA VXL LTD,
P.B.NO-34,G.T.ROAD,CHHEHARTA,
AMRITSAR

M/S BIRLA VXL LTD, Appellant

Vs

C.C.E. CHANDIGARH Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 614 /2008 –SM[BR] dated 20.3.2008

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. CHANDIGARH

   C.R. BUILDING, PLOT NO. 19, SECTOR 17-C, CHANDIGARH 160017
2. Adv. / Consult
   MR.R SUDHINDER ADV.
   C-179 BASMENT DAYANAND COLONY LAJPAT NAGAR IV
   NEW DELHI 110024
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 Delhi -
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 60017
13. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Office Copy
15. 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. III

Excise Appeal No.857 of 2006-SM (BR)

[Arising out of order in appeal No.418/CE/Chd/05 dated 30.11.2005 passed by the Commissioner (Appeals) Central Excise, Raipur]

Date of Hearing/ Decision:22.2.2008

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

M/s. Birla VXL Ltd. Appellants

[Rep. by Shri R.Sudhinder, Advocate.]

Vs.

CCE, Chandigarh Respondent

[Rep. by None.]

CORAM: **Mr. P.K. Das, Member (Judicial)**

Final Order NO.614/08-SM (BR)/Dated:22.2.2008

<u>**Per P.K. Das**</u>:

The relevant facts of the case, in brief, are that the appellants were engaged in the spinning of woolen yarn, weaving and processing of woolen fabrics and man-made fabrics and availing the facility of Proforma Credit on the inputs under Rule 56 A of the erstwhile Central Excise Rules, 1944. On 20.5.94, Proforma Credit Scheme was withdrawn. But, the appellant followed Proforma Credit procedure during the period from 20.5.94 to 2nd June, 1994. Revenue refused to allow the transfer of proforma credit to modvat scheme during that period 20.5.94 to 2.6.94. The appellant filed the refund claim for the amount of proforma credit availed by them during that period. The adjudicating authority rejected the refund claim, which was upheld by the Commissioner (Appeals).

2. Ld. Advocate on behalf of the appellant submits that this case is squarely covered by the decision of the Division Bench of this Tribunal in the case of National Industrial Corporation Vs. Collector of Central Excise – 1993 (68) ELT 692 (Tribunal). He further submits that Rule 57H of the erstwhile Central Excise Rules is applicable herein.

3. Ld. DR reiterates the findings of the Commissioner (Appeals). He submits that the adjudicating authority distinguished the decision of the Tribunal in the case of National Industrial Corporation (supra), which is not applicable in the facts of the case.

5. After hearing both the sides and on perusal of the records, I find that Proforma Credit Scheme was withdrawn w.e.f. 20.5.94 and was replaced by the Modvat credit. The contention of the appellant is that they have no knowledge of the introduction of the Modvat Scheme and, therefore, they continued to avail Proforpma credit to scheme for 14 days during the period from 20.5.94 to 2nd. June, 1994. I find force in the submission of the ld. Advocate that Rule 57H of the erstwhile Rules is applicable herein. I find that in the case of National Industrial Corporation (supra), the assessee followed the Proforma Credit Scheme for the period from 1.3.87 to 27.9.87 in spite of the fact that Proforma Credit Scheme was withdrawn on 1.4.87. The Tribunal in the said case allowed the Credit for the duty paid on inputs during that material period. For the proper appreciation, the relevant portion of the said decision is reproduced below:-

7. Rule 57H which is in relation to the transitional provisions provides that an Asstt. Collector of Central Excise could allow credit of the duty paid on inputs received by a manufacturer immediately before obtaining the dated acknowledgement of the declaration made, if he is satisfied that : (i) inputs are lying in stock or are received in the factory after filing of the declaration or (ii) such inputs are used in the manufacture of final product which are cleared from the factory on or after the first day of March 1987. Reading the said rule, it indicates that if the inputs are used in manufacture of the final products and the final products are cleared from the factory on or after the first day of March 1987, the benefit of the Modvat has to be granted by the Asstt. Collector. The discretionary powers invested in the Asstt. Collector have be judiciously exercised and if the criteria laid down in the said Rule is duly complied with, the discretion has to be exercised in favour of the assessee. The word 'immediate' used in the said rule and on which the Collector (Appeals) has laid much stress, has to be read not in isolation but in conjunction with the other provisions in the said rule. The interpretation given by the Collector (Appeals), therefore, does not appear to be correct. There is no dispute over the issue that the goods manufactured out of the inputs, were cleared from the factory on or after the first day of March 1987. In that case, therefore, clause (ii) Rule 57H would stand attracted and the benefit of modvat credit, by virtue of the transitional provisions, has to be given to the appellants. Rejection thereof is not correct.

6. In view of the above discussion, I set aside the impugned order and the appellants are eligible to get the Modvat credit for the duty paid on inputs lying and used during the period from 20.5.94 to 2nd June, 1994 in accordance with law. The appeal is disposed of in the above terms.

Order dictated & pronounced in open court on 22.2.2008.

(P.K. Das)
Member (Judicial)

Ckp.