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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/1006/2006-SM[BR] Date 15/04/2008

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

To :
M/S PETRO CARBON INDUSTRIES
S-10/252 MAQBOOL ALAM ROAD, VARANSI
221002

M/S PETRO CARBON INDUSTRIES Appellant

Vs

THE COMMISSIONER OF CENTRAL EXCISE Respondent
ALLAHABAD

I am directed to transmit herewith a certified copy of **Final order** No. 633 /2008 –SM[BR] dated 18.2.2008

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

Assistant Registrar

(SM Appeal Branch)

Copy to :
1. Respondent

THE COMMISSIONER OF CENTRAL EXCISE ALLAHABAD

THE COMMISSIONER OF CENTRAL EXCISE, ALLAHABAD (U.P.)

2. Adv. / Consult
MR.BIPIN GARG

B-1/1289,A-VASANT KUNJ, NEW DELHI

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. 1006 of 2006 –SM (BR)
[Arising out of order in appeal No. 151-CE/APPL/KNP/05 dated 28.02.2005 passed by the Commissioner (Appeals) Central Excise, Kanpur]

Date of Hearing/ Decision: 18.02.2008

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.	:	yes
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 Petro Carbon Industries — Appellant
[Rep. by Mr. Bipin Garg, Advocate for the Appellant]

Vs.

CCE, Allahabad — Respondent
[Rep. by Mr. S. Gautam, DR for the respondent]

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

Final **ORDER** No. 633/08-SM(BR)

Per P.K. Das:

The relevant facts of the case in brief are that the appellants are engaged in the manufacture of Calcined Petroleum Coke (in short CPC) falling under chapter Heading No. 2713.12 of the Schedule to the Central Excise Tariff Act, 1985. It has been alleged in the show cause notice dated 25.3.98 that during the checking of the records for the financial year 1993-94, they shown excess utilization of duty paid raw materials namely, Raw Petroleum Coke (in short RPC) on the basis of their cost data dated 25.8.95 for the period from April 94 to June 94. The adjudicating authority disallowed the credit on the alleged excess utilization and imposed penalty. Commissioner (Appeals) upheld the adjudication order.

2. Learned Advocate submits that the show cause notice is barred by limitation as it is revealed that the demand was raised on the basis of scrutiny of record which is available to them and there is no suppression of facts. He further submits that the data was supplied for the period April 1994 to June 1994 and demand was raised for the period 1993-94 when there was excess evaporation of RPC. He further submits that the appellant had given the details of consumption of the raw material monthwise in their chart. He relied upon the larger bench decision of the Tribunal in the case of CCE, Nagpur vs. Associated Cement Companies Ltd., reported in 2006 (197) ELT 215 (Tri. LB). He also relied upon the decision of the Tribunal in the case of Hindustan Coca Cola Beverages Pvt. Ltd., vs. CCE, Thane-I reported in 206 (205) ELT 700 (Tri. Mumbai).

3. Learned Departmental Representative reiterates the finding of the Commissioner (Appeals). He submits that the demand of duty is based on the data supplied by the appellant and therefore they cannot change their stand which is totally after thought. He further submits that the appellant failed to explain the excess utilization of the input.

4. After hearing both the sides and on perusal of the records, it is seen that the entire demand of duty for 1993-94 was calculated on the basis of consumption figure of April 1994 to June 1994 supplied by the appellant. Learned Advocate submits that the data is related to summer season and the said data is not applicable for earlier period. I find that the larger bench of the Tribunal in the case of Associated Cement Companies Ltd., (supra) held that modvat credit cannot be denied on loss of moisture contained in inputs due to evaporation. I also find that the appellant submitted a chart of monthwise consumption of the inputs. There is no material placed by the Revenue of clandestine removal of the inputs.

The appellant explained the natural loss, conversion loss and processing loss in detail which were not disputed by the lower authorities. So the contention of the learned DR is without any substance. Hence, I find that the demand of duty is not sustainable. I also find force in the submission of the learned Advocate that the demand is barred by limitation. It is seen from the show cause notice dated 25.3.98 that the appellant themselves provided the data on 25.8.1995 and the demand was raised on scrutiny of these records. There is no suppression of facts with intent to evade payment of duty. The demand of duty is not sustainable on merit as well as on limitation. Appeal is allowed with consequential relief.

(Order dictated and pronounced in the open Court)

(P.K. Das)
Member (Judicial)

[Pant]