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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/4013/2006-SM[BR] Date 12/05/2008

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

To :
C.C.E.CHANDIGARH
PLOT NO 19, SECTOR 17-C, CHANDIGARH.

C.C.E.CHANDIGARH Appellant

Vs

M/S KANDHARI BEVERAGES LTD Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 741 /2008 –SM[BR] dated 8.4.2008 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 KANDHARI BEVERAGES LTD
   VILLAGE- KATHA, BADDI, DISTT- SOLAN(HP)
2. Adv. / Consult SHRI J.P. KAUSHIK ADV.
   A-14/3, SFS, SAKET, NEW DELHI-110017
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)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO.II

E/Appeal No.4013/06-SM

(Arising out of order in appeal No.861/CE/Chd/06 dated 21.9.06 passed by the Commissioner of Central Excise (Appeals), Chandigarh)

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?
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?

N

CCE, Chandigarh — Appellant (Rep. by Shri B.S. Suhag, DR)

Vs

M/s Kandhari Beverages Ltd — Respondent (Rep. by Shri J.P. Kaushik, Advocate)

Coram: Hon'ble Mr P.K. Das, Member(Judicial)

Date of Hearing: 8.4.08

Final Order No. 741 /2008-SM(BR)

Per P.K. Das:

Heard both sides and perused the records.

2. The issue involved in this case is as to whether payment under Rule 3(4) of Cenvat Credit Rules, for clearance of input/capital goods as such

would be payable at the time of clearance on fortnightly/monthly basis under Rule 8 of Central Excise Rules.

3. I find that the issue is settled by the decisions of the Tribunal in favour of the respondents, as under:-

a) Grasim Industries Ltd Vs CCE Indore
2003 (155) ELT 200

b) Apar Industries Ltd Vs CCE Mumbai
2008 (84) RLT 59

c) Birla Ericsson Optical Ltd & Another Vs CCE Bhopal
2008 (85) RLT 280

4. The relevant portion of the decision of Apar Industries Ltd (Supra) is reproduced below:-

"It is seen that the issue is squarely covered in favour of the appellant by series of judgments of the Tribunal. The recent judgment in the case of CCE, Raigad Vs Cadila Healthcare Ltd. as reported in 2007 (79) RLT 300 (CESTAT-Mum) 2007 (TIOL) 300 CESTAT-Mum. It was held that:-

"I find that the issue is no more res integra and stands decided by the Tribunal decision in the case of KLRF Textiles Vs CCE, Tirunelveli 2005 (188)ELT 169 (Tri.-Chennai). It has been held in the said case that fortnightly facility to pay duty in terms of the Rule 8 is available even in respect of removal of modvatable inputs from the factory. To the same effect is another decision of the Tribunal in the case of CCE Raigad Vs Savita Polymers Ltd 2006 TIOL-1463-CESAT-MUM. As such, inasmuch as the credit stands reversed within a fortnight from the date of removal, confirmation of interest has been rightly set side by the Commissioner (Appeals). Accordingly, the appeal filed by the revenue stands rejected."

5. In view of the above, I do not find any reason to interfere with the order of the Commissioner (Appeals). The appeal filed by the Revenue is rejected.

(Order dictated and pronounced in the open Court).

(P.K. Das)
Member(Judicial)

MPS*