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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/3967/2006-SM[BR] Date 14/05/2008

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

To :
M/S WOCO MOTHERSON ELEASTOMERS LTD
D-3, SECTOR 11, NOIDA.

M/S WOCO MOTHERSON ELEASTOMERS LTD Appellant
Vs
C.C.E. NOIDA Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 765 /2008 –SM[BR] dated 7.5.2008 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. NOIDA
   B-123, SECTOR 5, NOIDA.
2. Adv. / Consult
   MR.V. LAXMIKUMARAN
   B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029
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 & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R.K.Puram, New Delhi-110066.
Principal Bench, New Delhi.

E/3967/06-SM

[Arising out of Order-in-Appeal No.138/CE/APPL/Noida dt.9.10.06 passed by the Commissioner(Appeals), Noida)

For approval and signature:

Hon'ble Mr. S.S. KANG, VICE PRESIDENT

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?	:	No
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. Woco Motherson Elastomers Ltd. Appellant

Versus

CCE, Noida Respondent

Appearance

Sh. Ravi Raghvan with Ms. Purnima Lakshminarayan,Advs. For Appellant

Ms. Archna Pandey Tiwari, Authorised Departmental Representative(JCDR) for Respondent

Coram: Hon'ble Mr. S.S. KANG, VICE PRESIDENT

Date of decision: 7.5.08
Final Order No. 765/08-SM(BR)

Per S.S.Kang:

Heard both sides. The appellant filed this appeal against the order-in-appeal passed by Commissioner(Appeals) whereby the credit taken in pursuance to the order-in-Appeal No.281-283/CE/APPL/Noida dt.14.9.04 was disallowed on the ground that in view of the Board's circular No.77/99-

Cus dt.18.11.99. The appellant is a 100% EOU and goods were cleared for export on payment of duty. Thereafter the appellant filed a rebate claim. In the rebate claim, the revenue was of the opinion that the appellant had wrongly paid duty in respect of on freight, therefore, the rebate claim was restricted only to the duty paid at the time of clearance of the goods and the Commissioner(Appeals) vide order dt.14.9.04 held that an amount of duty of Rs.54,477/- should be refunded to the appellant by way of Cenvat credit. In pursuance to this order, the credit was availed. In the present impugned order, the Commissioner(Appeals) after relying upon the Board's circular dt.18.11.99 held that Modvat credit availed by DTA unit before its conversion into EOU lying in balance as unutilized would lapse.

2. The contention of the appellant is that Board's circular dt.18.11.99 is in respect of the credit lying unutilized in respect of the capital goods and not in respect of inputs. In the present case, duty has been paid in respect of goods as the same has been paid from RG.23A Part.II. Therefore, the credit cannot be denied.

3. The contention of the revenue is that it is not clear whether the duty has been paid from the Cenvat credit availed on the input, therefore, assessee has to correlate ~~to~~ the payment of duty from the credit availed in respect of the inputs.

4. I find that the credit was disallowed in view of the Board's circular No.77-99/Cus dt.18.11.99. For ready reference, the Board's circular is reproduced below:

> "Paragraph 9.28 of the EXIM Policy, 1997-2002 provides that existing DTA units may also apply for conversion into an EOU/EHTP/STP, but no concession in duties and taxes would be available under the scheme for plant, machinery and equipment already installed. In this connection, instances have come to the notice of the Board that such units on their conversion into EOUs have been asked to reverse the Modvat credit already availed of,

on plant and machinery procured by them prior to their conversion into EOUs.

2. The matter has been examined. It is clarified that if the DTA unit has availed of the Modvat credit on plant, machinery and equipment and also utilized such credit for payment of duty on goods manufactured and cleared before its conversion into EOU/EHTP/STP, the same is not required to be demanded on its conversion into EOU/EHTP/STP. However, if the Modvat credit so availed of is lying inbalance as unutilized on the date of conversion into EOU/EHTP/STP, it would lapse on conversion of DTA unit into EOU/EHTP/STP unit and cannot be utilized after such conversion.

3. Wide publicity may be given by issue of Public Notice in this regard".

5. The Board's circular clarifies that Modvat credit in respect of capital goods lying in balance as unutilized on the date of conversion of DTA unit into EOU would lapse. In the present case. As per SCN, the duty has been paid from the Cenvat credit taken in respect of inputs and credit was also availed in the same account. In these circumstances, the impugned order is set aside and the appeal is allowed.

Order dictated in the open Court.

(S.S.Kang)
Vice President

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