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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Appeal No. E/5310/2004 - EX[DB]

Date 13/02/2009

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

To :
C.C.E. LUCKNOW
5 & 11 FLOOR, KENDRIYA BHAWAN, SECTOR-H,
ALIGANJ, LUCKNOW
C.C.E. LUCKNOW

Appellant
Vs
Respondent

M/S U.P. ASBESTOS LTD.

I am directed to transmit herewith a certified copy of **Final order No.**127/2009-**EX[DB]** dated 04-2-09

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

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
M/S U.P. ASBESTOS LTD.
MOHANLAL GANJ, LUCKNOW
2. Adv. / Consult SH. KAMAL JEET SINGH, ADV,
J-144, PATEL NAGAR-I
GHAZIABAD
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 - 3
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
13 Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15 Office Copy
16 Guard file

Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. III

Excise Appeal No. 5310 of 2004

[Arising out of Order in Appeal No. 179-CE/LKO/2004 dated 30.7.04 passed by Commissioner(Appeals) Central Excise & Service Tax, Lucknow]

For approval and signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)
Hon'ble Mr. P.K.Das, Member (Judicial)

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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? N
3. Whether Their Lordships wish to see the fair copy of the Order? :
4. Whether Order is to be circulated to the Departmental authorities? : Yes

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Commissioner of Central Excise Lucknow — Appellant

Vs.

M/s. U.P. Asbestos Ltd. — Respondent

Appearance:

Mr. S.N. Srivastava, DR for the Appellant
Mr. M.Chandra Shekharan Sr. Advocate with Shri Kamaljeet Singh, Advocate for the Respondent

CORAM:

Hon'ble Mr. M. Veeraiyan, Member (Technical)
Hon'ble Mr. P.K.Das, Member (Judicial)

Date of Hearing /Decision: 4.2.2009

FINAL **ORDER NO. 127/09-EX**

Per P.K.Das (for the Bench):

Heard both sides and perused the records.

2. Revenue filed these appeals against the Order in Appeal No. 179-CE/LKO/2004 dated 30.7.04 passed by the Commissioner (Appeals), Lucknow. The finding of the Commissioner (Appeals) is reproduced below:

"7. I have gone through the records.

I find that the appellant has relied on the case of CCE vs. Ashok Iron & Steel Fabricators [2002 (140) ELT 277 (LB)]. In the facts of that case the assessee was manufacturing kerosene wick stoves and parts of kerosene wick stoves. The stoves were fully exempt while the parts were dutiable. Therefore the assessee was following modvat procedure in respect of the parts which were also end products in themselves. Subsequently vide Notification No. 10/96-CE dated 23.7.96 parts captively consumed were exempt. The appellant reversed the amount of duty on the stock of inputs lying with them, the credit of which had already been taken and utilised prior to 23.7.96, the date of the exemption notification. Thereafter they therefore claimed refund on the ground that they were not required to reverse/pay this amount under the Modvat Rules. The refund was rejected by the adjudicating authority and allowed by the Commissioner (Appeals) following the decision in the case of Premier Tyre. The Larger Bench after examining the decisions in the case of Super

Cassettes (Allahabad High Court), Premier Tyre (Kerala High Court) and Dai Ichi Karkaria (Apex Court) held that the issue stands covered by the finding of the Supreme Court in the decision of Dai Ichi Karkaria before whom the decision of the Allahabad High Court in the case of Super Cassettes was also quoted."

3. The learned Senior Advocate submits that the Larger Bench of the Tribunal in the case of HMT vs. CCE Panchkula [2008 (232) ELT 217 (Tri-LB) examined the decision of the Tribunal in CCE vs. Ashok Iron & Steel Fabricators [2002 (140) ELT 277 (LB)]. The relevant portion of the decision of the Larger Bench of the Tribunal is reproduced below:

> 21. We find that the different benches of the Tribunal have taken the similar view in the cases of C.N.C. Commercial Ltd. (supra) upheld by the High Court, Saboo Alloys Pvt. Ltd. (supra), Swastik Textile Engineers Ltd. (supra) and P.S.L. Ltd. (supra). We agree with the views expressed in the said decisions.
>
> 22. In view of the above discussions, we hold that when the input-credit legally taken and utilised on the dutiable final products, need not be reversed on the final product becoming exempt subsequently w.e.f. 9.7.2004. The decision of the Bangalore Bench in the case of TAFE Ltd. (Tractor Division) v. CCE, Bangalore -2007 (210) ELT 571 (Tri)= 2007 (79) RLT 706 (Tribunal-Bangalore) enunciated the correct position of the law. The issue is thus, answered in favour of the assessee and against the Revenue."

4. On perusal of the above decision, we find that Bangalore Bench in the case of TAFE Ltd. (supra) decided the above issue following the deicison of the Tribunal in the case of Ashok Iron & Steel Fabricators (supra) as relied upon by the Commissioner (Appeals). In view of the decision of the Larger Bench of the Tribunal in HMT(supra), we do not find any merit in the appeal filed by the Revenue. Accordingly, the appeal of the Revenue is rejected.

(Dictated & Pronounced in the open Court)

(M. Veeraiyan)
Member(Technical)

(P.K.Das)
Member(Judicial)

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