

**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/1297/2007 – SM [BR]

Date 09/02/2009

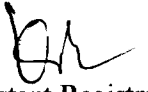
Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S NATIONAL ENGG. IND. LTD.
H.O AT KHATIPURA ROAD, JAIPUR (RAJASTHAN)
M/S NATIONAL ENGG. IND. LTD.

C.C.E. JAIPUR I

Appellant
Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No. 139 / 2009 - SM[BR] dated 4.2.2009
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. JAIPUR I

N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.

2. Adv. / Consult SHRI BIPIN GARG ADV.

B-1/1289-A, VASANT KUNJ NEW DELHI -70.

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 Publications (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 Puniabi Bagh, New Delhi - 110026

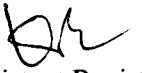
12 Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thvagarava Road, T. Nagar, Chennai

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-1

15 Office Copy

16 Guard file


Assistant Registrar
(SM Appeal Branch)

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH – COURT NO. 1

Excise Appeal No. 1297 of 2007

(Arising out of Order-in-Appeal No. 31/GRM/CE/JPR-I/2007 dated 13.02.2007
passed by the Commissioner of Customs & Central Excise (Appeals-I), Jaipur-I).

DATE OF HEARING : 03.02.2009

DATE OF DECISION : 03.02.2009

FOR APPROVAL AND SIGNATURE :

HON'BLE MS. JYOTI BALASUNDARAM, 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 ?.	No
2.	Whether it should 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 ?	Seen
4.	Whether Order is to be circulated to the Departmental Authorities?	yes

M/s National Engg. Ind. Ltd.

... **Appellant**
(Rep by Sh. Atul Gupta, CA &
Sh. V.S. Mishra, Adv.)

versus

CCE, Jaipur-I

... **Respondent**
(Rep. by Sh. S. Gautam, DR)

CORAM : HON'BLE MS. JYOTI BALASUNDARAM, VICE-PRESIDENT

Final ORDER NO. 139 / 09 - SM (BR)

PER JYOTI BALASUNDARAM :

In this case, the appellant availed 50% credit on capital goods which they cleared during the same financial year on payment of full duty. They availed the balance 50% in the next financial year which was disallowed by the lower appellate authority on the ground that the capital goods were not in their possession in the subsequent financial year.

2. I have heard both sides and find that the issue in dispute stands settled by the Tribunal's order in **Kagaz Print-N-Pack (India) Pvt. Ltd. vs CCE, Jaipur-I**, 2007 (220) ELT 793 (T-Del.), holding that 50% credit availed during the subsequent financial year, even when goods were not physically available with the assessee, cannot be denied. Following the ratio of the above order, I set aside the impugned order and allow the appeal.

(Dictated and pronounced in the open Court on the 3rd day of February, 2009)

(JYOTI BALASUNDARAM)
VICE-PRESIDENT

Golay