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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/6048/2004 – SM[BR] Date 11/02/2009

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

To :
M/S HIND SPINNERS
PLOT NO-2,3&4 INDUSTRIAL CENTRE PILLUKHEDI
DISTT.RAJGRH,M.P

M/S HIND SPINNERS Appellant
Vs
C.C.E.BHOPAL Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 146 / 2009 - **SM[BR]** dated 6.2.2009 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.BHOPAL
OPP.C.I.FLOUR MILLS HOSHANGABAD ROAD,BHOPAL M.P
2. Adv. / Consult
MR.Z. U. ALVI
D-8,BDA COLONY, ADJACENT GARUDA TRAVELS. KOH-E-FIZA BHOPAL-01
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-1
15 Office Copy
16 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.I

Excise Appeal No. 6048 of 2004 - SM

[Arising out of order-in-appeal No. 769-CE/BPL/2004 dated 04.11.2004 passed by the Commissioner (Appeals) Customs & Central Excise, Bhopal]

Date of Hearing/Decision : 04.02.2009

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?	Yes
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 Hind Spinners — Appellant
[Rep. by Mr. Z.U. Alvi, Advocate]

Versus

CCE, Bhopal — Respondent
[Rep. by Mr. R.K. Verma, DR]

CORAM: Hon'ble Ms. Jyoti Balasundaram, Vice-President

Final Order No. 146/09-SM(BR)

Per Jyoti Balasundaram:

The issue in dispute in the present case is whether cenvat credit is admissible on furnace oil sludge which is a waste of mineral oil accumulated at the bottom of the storage tank in which the oil is stored and it is formed through the natural gravitational force on account of differential specific gravity only.

2. I have heard both sides. It is clear that the sludge was stored and not issued for use in the captive power plant in the factory of the appellant who are manufacturer of spun yarn of polyester and viscose. Although, learned Counsel would contend that the sludge formed is also to be treated as having been issued for the manufacture of final product and hence credit is not required to be reversed, I find no merit in the above submission of the learned Counsel for the reason that admittedly the sludge accumulated at the bottom of the storage tank in which the oil is stored for the manufacture of final product. In this view of the matter, the decision of the Tribunal in CCE, Meerut vs. U.P. Co-op. Sugar Factories -1997 (93) ELT 236 (Tribunal) and Timex Watches Ltd., vs. CCE, Meerut- 2002 (141) ELT 152 (Tri. Del.) holding that credit is not admissible on inputs destroyed prior to being used for manufacture of final product, and not to be denied only in case of such inputs as are rendered waste during the process of manufacture are squarely applicable in the present case. The case law relied upon by the appellant namely Jaypee Rewa Plant vs. CCE, Bhopal -2005 (183) ELT 305 (Tri. Del.) holding that mixed oil sludge coming out of machine in manufacture of cement and clinkers, is not dutiable is distinguishable from the present case. The analogy sought to be drawn by the learned Counsel between the sludge and packing of goods and drum is not correct for the reason that packing materials are used to save goods them from damage and therefore are used in the manufacture of final product. In the light of the above discussions, I uphold the impugned order and reject the appeal.

[Dictated and pronounced in the open Court]

[Jyoti Balasundaram]
Vice President

[Pant]