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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/1366/2007 – SM[BR] Date 19/05/2009

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

To :
M/S EXPO INTERNATIONAL
105, RAJEEV NAGAR, KENDRIYA HINDI SANSTHAN
ROAD, AGRA.

M/S EXPO INTERNATIONAL Appellant
Vs
C.C.E. KANPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 381 / 2009 –SM[BR] dated 24.4.2009

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. KANPUR
   117/7, SARVODAYA NAGAR, KANPUR 208005.
2. Adv. / Consult
   MR.R. SANTHANAM
   C-3/210, JANAK PURI, NEW DELHI - 110 058.

3 S.D.R
~~4 J.C.D.R.~~
5 Bar association, CESTAT, New Delhi
6 Director Publications, Customs, Excise. I.P. Estate, New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT. U.P.
10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11 M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
12 Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
13 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
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Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. IV
Excise Appeal No. 1366 of 2007 (SM)

[Arising out of the Order-in-Appeal No. 39/CE/APPL/KNP/ 2007 dated 24/01/2007 passed by The Commissioner of Central Excise (Appeals), Kanpur.]

For Approval and signature :
Hon'ble Shri Rakesh Kumar, Member (Technical)

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?	:
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 Expo International Appellant

Versus

CCE, Kanpur Respondent

Appearance

Shri R. Santhanam, Advocate – for the appellant.

Shri S. K. Bhaskar, Authorized Representative (DR) – for the respondent.

CORAM : **Hon'ble Shri Rakesh Kumar, Member (Technical)**

DATE OF HEARING : 24/04/2009.

Final Order No. 381/09-SM(OR) Dated : 24.4.09

Per. Rakesh Kumar :-

This is an appeal against the impugned order in appeal No. 67/CE/APPL/KNP/99 dated 12/02/99 passed by CCE (Appeals), Kanpur, by which the Commissioner (Appeals), allowing the Revenue's review appeal set aside the Assistant Commissioner's order-in-original dated 29/12/97 by which the Assistant Commissioner had dropped the proceedings against the Appellant. The Appellant are a manufacturer of footwear and in August 1997 they had purchased some chemicals from a first stage dealer M/s Sarin Sales Corporation and had taken Modvat credit on the basis of the same. The Department issued a show cause notice to them seeking denial of Modvat credit of Rs. 43,020/- and also imposing penalty on them on the ground that the invoices of M/s Sarin Sales Corporation, on the basis of which the Modvat credit had been taken, neither bear the words "duplicate for transport" nor the mode of transport has been mentioned and beside this, debit of duty at the manufacturer end was also not mentioned. The Assistant Commissioner, however, vide order-in-original dated

29/12/97 dropped the proceedings on the ground that he has examined the invoices and observed that from the colour and carbon impressions, there is no doubt that the invoices, on the basis of which the Modvat credit has been taken, are the duplicate copies and non mentioning of the vehicle number and duty debit at the manufacturers end, are the procedural lapses, because of which the Modvat credit to which the appellant are eligible, cannot be denied. ~~again to~~ The Department, however, filed a review appeal against the Assistant Commissioner's order and the CCE (Appeals), Kanpur vide order-in-appeal dated 27/07/04 allowed the review appeal and set aside the Assistant Commissioner's order. The Appellant filed an appeal before the Tribunal and the Tribunal vide final order dated 04/05/05 set aside the Commissioner (Appeals)'s order and remanded the matter to Commissioner (Appeals) for deciding the matter afresh after affording an opportunity to the Appellant and giving an opportunity of personal hearing. However, the Commissioner (Appeals) after denovo proceedings vide the impugned order in appeal No. 39/CE/APPL/KNP/07 dated 24/01/07 again allowed the Revenue's appeal and set aside the Assistant Commissioner's order. It is against this order, that the present appeal has been filed by the Appellant.

2. Heard both the sides.

2.1. Shri R. Santhanam, Advocate, the learned Counsel appearing for the Appellant, pleaded that the inputs in respect of which Cenvat credit has been taken had been purchased from a first stage dealer, M/s Sarin Sales Corporation, that Modvat credit has been taken on the basis of the two invoices issued by the first stage dealer, that there is no dispute about the receipt of the inputs by the Appellant, that the copies of the invoice on which the Modvat credit has been taken are duplicate invoices and that just because the mode of transport is not mentioned and the duty debit at the manufacturer's end is not mentioned and the invoices do not bear the words "Duplicate for Transport", the Modvat credit cannot be denied. He emphasized that the Assistant Commissioner had given a clear finding that the invoices are duplicate invoices and mentioning the words – "duplicate for transport" on the invoices, mentioning the mode of transport and duty debit at manufacturers end are procedural formalities ~~on the basis of~~ for the want of which, ~~which~~, Modvat credit cannot be denied. Shri Santhanam, also mentioned with regard to mode of transport that, M/s Sarin Sales Corporation have given two certificates, both dated 20th November 1997 indicating the mode of transport and vehicle number for the respective consignments and also the original invoices of the manufacturer under which the duty on goods had been paid.

2.2 Shri S.K. Bhaskar, the Learned Departmental Representative defended the impugned order reiterating the Commissioner (Appeals)'s finding. He emphasized that from the invoices it is not clear as to whether the same are duplicate for transporter or otherwise and that the duty debit at the manufacturers end has also not been mentioned and because of this, the invoices, on the basis of Modvat credit has been taken are not valid document on which Modvat credit could be taken.

3. I have carefully considered the submissions from both the sides and perused the records. In this case the Appellant had purchased the goods from M/s Sarin Sales Corporation, who are first stage dealer and who in turn had purchased the goods from manufacturer M/s ATV Projects, Raigarh. The only ground on which the Modvat credit is denied by the Department is that the invoices neither mentioned the word "duplicate for transport" in the invoices nor they mentioned the mode of transport and beside this, the duty debit at the manufacturer's end is also not mentioned. In this case, there is no dispute about the fact that the inputs have been received by the Appellant. I find that the Assistant Commissioner has given a clear finding that the invoices

on the basis of which the basis Modvat credit has been taken, are duplicate invoices and just because the vehicle number and debit entry at the manufacturers end are not mentioned, the Modvat credit cannot be denied. I also find that subsequently M/s Sarin Sales Corporation had given a certificate mentioning the vehicle number in which the goods had been transported and also the invoices issued by the manufacturers under which the duty had been paid on the goods. In view of these circumstances, mere absence of words "duplicate for transport" on the invoices and non mentioned of debit of the duty at the manufacturer's end are only procedural lapses because of which the Modvat credit cannot be denied. The impugned order, therefore, is not sustainable. The same is set aside. The appeal is allowed.

(Dictated and pronounced in open court.)

(Rakesh Kumar)
Member (Technical)

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