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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/1054/2007 – SM[BR] Date 22/05/2009

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

To :
M/S JANARDHAN PLYBOARD INDUSTRIES LTD.
13, GANDHI ROAD, DEHRADUN.

M/S JANARDHAN PLYBOARD INDUSTRIES LTD. Appellant
Vs
C.C.E. MEERUT I Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 453 / 2009 –SM[BR] Dated 20.4.2009 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. MEERUT I
   EXCISE CHOWK, UNIVERSITY ROAD, MANGAL PANDEY NAGAR, MEERUT - 250005.
2. Adv. / Consult
   MR.BIPIN GARG
   B-1/1289,A-VASANT KUNJ, NEW DELHI
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
15. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
16. Office Copy
17. Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Excise Appeals Nos.1054 of 2007-SM (BR)

[Arising out of common Order-in-Appeal No.14-CE/MRT-I/2007 dated 22.01.2007 passed by the Commissioner of Central Excise (Appeals), Meerut]

Date of Hearing/ Decision:20.04.09

For approval and signature:

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

3. Whether Press Reporters may be allowed to see 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? :
3. Whether Their Lordships wish to see the fair copy of the Order? :
4. Whether Order is to be circulated to the Departmental authorities? :

M/s. Janardhan Plyboard Industries Ltd. ....Appellant
[Rep. by Shri Atul Gupta, C.S.]

Vs.

CCE, Meerut ...Respondent
[Rep. by Shri S. Gautam, DR]

CORAM: **Hon'ble Mr. P.K. Das, Member (Judicial)**

Final Order No...453/09.../Dated:20.04.2009

Per P.K. Das:

The relevant facts of the case, in brief, are that the appellants are engaged in the manufacture of Plyboard and Articles of Wood classifiable under Heading No.4408.90 and 4410.11 of the Schedule to the Central Excise Tariff Act, 1985. Show cause notices were issued proposing to reverse the credit amounting to Rs.1,43,169/- on the inputs, which were used in the manufacture of exempted goods under Notification No.49/2003 and 50/2003, both dated 10.06.2003. The Original Authority dropped the demand of duty. The Revenue filed appeal before the Commissioner (Appeals). By the impugned order, the Commissioner (Appeals) held that the Modvat credit on the inputs contained in finished goods lying in stock/work in process at the time of exercise of option of exemption notification is not available to the appellants. Hence, the appellant filed this appeal.

2. After hearing both the sides and on perusal of the records, I find that the issue has already been decided by the Tribunal in the case of M/s. Apco Pharma Limited Vs. CCE, Meerut-I vide Final Order No.183 of 2009-SM (BR) dated 9.2.2009. It is seen that in the case of M/s. Apco Pharma Limited, the appellants opted for benefit of Notifications Nos.50/2003 dated 10.06.2003. The dispute raised as to whether the assessee is liable to reverse the credit attributable to the inputs lying as such and inputs used in the goods under process as well as inputs contained in the finished goods, which are lying in stock. The Tribunal in the case of Apco Pharma Limited (supra) following the Larger Bench decision in the case of HMT & Others Vs. CCE, Panchkula reported in 2008 (89) RLT 558 (CESTAT-LB) held that the credit has been taken

validly and validly utilized and therefore, there is no question for reversal of the credit while opting the exemption notification. The relevant portion of the decision in the case of M/s. Apco Pharma Limited (supra) is reproduced below:-

> "6. I have carefully considered the submissions from both sides. The submission of the learned Advocate is that the credit was taken when the final goods were dutiable and, therefore, the credit taken was legal. Similarly, the credit was utilized towards paying duty when the final products were dutiable and therefore utilization was also legal and proper. He also submits that the Larger Bench decision of the Tribunal in HMT & Others (supra) will be applicable in their case. I find the above submissions are valid and acceptable. The relevant portion of the order relied by the learned Advocate is reproduced below:-
>
> > **19.**The Hon'ble Rajasthan High Court in the case of *Hindustan Zinc Ltd.* v. *Union of India* reported in 2008 (223) E.L.T. 149 (Raj.), while dealing with Rule 57C and Rule 57CC of Rules 1944 relying on the decision of Supreme Court in the case of *Dai Ichi Karkaria Ltd.* (supra) and Kerala High Court decision in the case of *Premier Tyres Ltd.* (supra) held that if on the date of entitlement, there is no illegality or invalidity in taking credit of such Modvat/Cenvat credit, right to utilisation such credit against further liability towards duty become indefeasible and is not liable to be recovered in such contingency. The relevant portion of the said decision is reproduced below :-
> >
> > "39. Upshot of this discussion in that prohibition claiming Modvat credit on exempted goods against duty applies in case where such exemption or subject to nil rate of from payment of Duty or nil rate of Duty on end product is predictably known at the time the recipient of inputs is entitled to take credit of duties paid on such inputs. The fact that due to subsequent notification or on contingency that may arise in future, the end product is cleared without payment of duty due to exemption or nil rate of duty does not affect the availing of Modvat credit on the date of entitlement. If on the date of entitlement, there is no illegality or invalidity in taking credit of such Modvat/Cenvat credit, the right to utilise such credit against future liability towards duty become indefeasible and it is not liable to be reversed in the contingency discussed above."

20. On the Rule 6 of Rules 2002 and the perusal of above, we are of the view that the corresponding Rules, as mentioned Appellants had correctly taken the credit and utilised, when the final product was dutiable and there is no requirement to reverse the credit on final product becoming exempt and such credit cannot be recovered under Rule 12 of Rules 2002 corresponding to Rule 57-I, 57AH of Rules 1944.

21. We the different benches of the Tribunal have find that the cases of taken the similar view in *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 above discussions, we hold that when the view of the taken and utilised on the dutiable final input-credit legally 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) E.L.T. 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.

3. In view of the above discussions and respectfully following the decision of the Tribunal in the case of Apco Pharma Limited (supra), I find that the impugned order is not sustainable. Accordingly, the impugned order is set aside and the appeal is allowed with consequential relief.

Order dictated & pronounced in open court on 20.04.2009.

(P.K. Das)
Member (Judicial)

Ckp.