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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/2325/2007 – SM[BR] Date 18/06/2009

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

To :
M/S KAVIT PU FOAM P. LTD.
A-II/3,SITE-IV, INDL AREA SAHIBABAD,

M/S KAVIT PU FOAM P. LTD. Appellant
Vs
C.C.E. GHAZIABAD Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 589 / 2009 –SM[BR] dated 9.6.2009 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. GHAZIABAD
   C.G. O. COMPLEX-II, KAMLA NEHRU NAGAR, GHAZIABAD 201302
2. Adv. / Consult
   MR.RAJESH CHHIBBER
   FA/9, NEW KAVI NAGAR, GHAZIABAD

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)
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Assistant Registrar
(SM Appeal Branch)

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

Excise Appeal No.2325 of 2007-SM (BR)

[Arising out of Order-in-Appeal No.56-CE/GZB/2007 dated 8.6.2007 passed by the Commissioner of Central Excise (Appeals), Ghaziabad]

Date of Hearing/ Decision:9.6.2009

For approval and signature:

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

1. 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?	:	NR
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

M/s. Kavit PU Foam Industries ...Appellant
[Rep. by Shri Rajesh Chhiber, Advocate]

Vs.

CCE, Ghaziabad ...Respondent
[Rep. by Shri R.K. Saini, DR]

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

Final Order No. S 89/09-SM (BR)/Dated:09.06.2009

Per P.K. Das:

Heard both sides and perused the records.

2. The relevant facts of the case, in brief, are that the appellants are engaged in the manufacture of PU Foam. In the month of October, 2001,

they closed down their unit and shifted to another place and obtained new registration certificate dated 30.10.2001 for manufacturing of the excisable goods. They removed the inputs and finished goods by issue of invoices and availed credit at their new premises. This was informed to the Department by their letter dated 20.11.2001. They have also filed RT-12 Return showing the transfer of inputs and finished goods from their old unit to new unit. On 6.1.2005, the Jurisdictional Central Excise Officers, during examination of the records, directed them to debit the amount of Rs.2,20,508/- in view of the Audit letter dated 3.1.2005. The appellants in compliance to the directions of the jurisdictional Central Excise Officers debited the said amount under protest in their RG-23 A Part-II Account on 26.2.2005. Thereafter, they approached the Central Excise Office to allow them to re-credit the such amount. Further, by letter dated 18.06.2005, they requested the Dy. Commissioner of Central Excise to transfer the credit under Rule 8 of the Cenvat Credit Rules. No communication was made. Hence they re-credited the amount suo moto in their RG-23 A Part-II Account on 4.8.2005. Hence, a show cause notice dated 4.8.2006 was issued proposing to recover the said amount as they have taken the credit suo moto. The Original Authority confirmed the demand of wrongly availed Cenvat credit of Rs.2,20,508/- along with interest. The Commissioner (Appeals) upheld the Adjudication Order.

3. After hearing both the sides and on perusal of the records, I find that by letter dated 18.6.2005, the appellants requested the Dy. Commissioner of Central Excise to allow the transfer of credit under Rule 8 of the Cenvat Credit Rules in respect of the credit reversed by them on 26.2.2005.

4. I find that no decision was passed in respect of the letter dated 18.6.2005. In my view, to meet the ends of justice, it is required to decide the present matter after considering the letter dated 18.6.2005 of the appellant. In view of that, the impugned order is set aside. The matter is remanded back to the Original Authority to decide afresh after considering the letter dated 18.6.2005. The appellant is also directed to produce all the documents and to make submission in detail. Needless to say that the Original Authority shall give opportunity of hearing before decision. The appeal is allowed by way of remand.

Order dictated & pronounced in open court on 9.6.2009.

(P.K. Das)
Member (Judicial)

Ckp.