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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

Date 23/06/2009

Appeal No. E/1663/2006-1664/2006 – SM[BR]

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

To :
M/S DOABA ALCO CHEMICALS
VILL CHANDPUR RURKI,P.O.SORAYA TEH
BALACHAUR,DISTT NAWANSHARHAR.

M/S DOABA ALCO CHEMICALS — Appellant

Vs

CCE,CHANDIGARH — Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 620 – 621 / 2009 –SM[BR] dated 19.5.2009 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   CCE,CHANDIGARH
   CRB SECTOR-17C,CHANDIGARH
2. Adv. / Consult
   MR.G.S.BHANGOO
   631 (FF), SECTOR 11B, CHANDIGARH

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)

2. M/S DOABA ALCO CHEMICALS
VILL CHANDPUR RURKI ,P.O. SORAYA.TEH BALACHUR
DISTT-NAWANSHAR

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

Excise Appeals Nos.1663-1664 of 2006-SM (BR)

Arising out of Orders-in-Appeal No.73-74/CE/Jal/06 dated 23.02.2006 passed by the Commissioner of Central Excise (Appeals), Chandigarh]

Date of Hearing/ Decision:19.05.2009

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? :
3. Whether Their Lordships wish to see the fair copy of the Order? : No
4. Whether Order is to be circulated to the Departmental authorities? : Yes

M/s. Doaba Alco Chemicals .....Appellants
[Rep. by Miss Asmita Nayak, Advocate]

Vs.

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

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

Final Order No. 620 - 621/09-SM(BR) /Dated:19.05.2009

Per P.K. Das:

These appeals are arising out of common Order and, therefore, both are being taken up together for disposal.

2. The Original Authority granted refund claim of Rs.2,94,000/- and Rs.13,897/- by way of re-credit in Cenvat Credit Account. The contention of the appellants is that factory has closed down in April, 2000 and therefore, they are not able to take credit in the Cenvat Account and, therefore, refund may be granted in cash. The Commissioner (Appeals) upheld the Adjudication Order.

3. Ld. Advocate on behalf of the appellants submits that there was a demand of duty by show cause notices dated 13.5.99 and 10.6.99, which was confirmed by the Original Authority and upheld by the Commissioner (Appeals). The appellants deposited the entire amount of duty from their Cenvat Account. The Tribunal vide Final Order No.A/1507-1509/04-SM dated 11.10.2004 set aside the orders and allowed the appeals. Hence, the appellants filed the refund claim. She submits that the appellants' factory is closed down but they are unable to surrender the Registration Certificate for the reason that there was unutilised balance lying in their PLA, which has been refunded by cash in the present proceedings. So, they are now able to surrender Registration Certificate. She relied upon the decision of the Tribunal in the case of Slovak India Trading Co.Pvt. Ltd. Vs. CCE, Bangalore reported in 2006 (205) ELT 956 (T-B), which was upheld by the Hon'ble Karnataka High Court in the case of Union of India Vs.Slovak India Trading Co. Pvt. Ltd. reported in 2006 (201) ELT 559 (Karnataka) and also upheld by the Hon'ble Supreme Court as reported in 2008 (223) ELT A-170 (SC). She

also relied upon the decision of the Hon'ble Punjab & Haryana High Court in the case of M/s. Rama Industries Ltd. Vs. CCE, Chandigarh reported in 2009 -TIOL-100-HC-P&H-CX.

4. Ld. DR reiterates the findings of the Commissioner (Appeals). He submits that the case laws relied upon by the ld. Advocate are applicable in the case of closure of Factory. He submits that in the present case, the Registration Certificate was not surrendered and, therefore, the factory was not closed down. He relied upon the decision of the Hon'ble Punjab & Haryana High Court in the case of Nahar Industrial Enterprises Vs. Union of India – 2009 (235)ELT 22 (P&H).

5. After hearing both the sides, I find that ld. Advocate on behalf of the appellants fairly submits that due to un-utilised balance lying in their PLA, they were unable to surrender the Registration Certificate. Ld. Advocate also submits that in the present Adjudication Order, the unutilised balance in PLA was refunded in cash. So, they are now able to surrender the Registration Certificate. It is seen that in the case of Slovak India Trading Co. Pvt. Ltd. (supra), it has been held that refund claim was eligible and has to be made in cash when the assessee goes out of Modvat Scheme or when company was closed down. Ld. DR submits that there is no provisions under the Central Excise Rules for refund of cash against Cenvat Account. I find that the Tribunal held that in this situation, refund is eligible in pursuance of Rule 5 of Cenvat Credit Rules. It has been upheld by the Hon'ble Supreme Court. It is also noted

that the Hon'ble Punjab & Haryana High Court in the case of Rama Industries Ltd. (supra) following the decision of the Karnataka High Court allowed the refund of Cenvat Credit in cash. Ld. DR relied upon the decision of the Tribunal in the case of Nahar Industrial Enterprises Ltd. (supra), which is not applicable in the present case. In the case of Nahar Industrial Enterprises, the assessee paid lesser duty on domestic products and higher duty on export products, which was not payable. It has been held that the assessee is not entitled to refund thereof in cash of credit of higher excise duty paid from Cenvat Account. In the present case, refund is arising due to the closure of the factory.

6. In view of the above discussion, it is seen that the Registration Certificate of the appellants has not yet been surrendered. Hence, it is fit case to remand the matter to the Original Authority with direction to refund the amount in cash as and when Registration Certificate is surrendered. The impugned orders are set aside. Both the appeals are allowed by way of remand with the above directions.

Order dictated & pronounced in open court on 19.05.2009.

(P.K. Das)
Member (Judicial)

Ckp.