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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/2540/2007 – SM[BR] Date 15/07/2009

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

To :
M/S INTERNATIONAL TRANSORMER P LTD
OPPOSITE AMAUSI AIR PORT, KANPUR ROAD,
LUCKNOW.(UP)

M/S INTERNATIONAL TRANSORMER P LTD — Appellant
Vs
C.C.E. LUCKNOW — Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 691 / 2009 –SM[BR] dated 7.7.2009

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. LUCKNOW
   7-A, ASHOK MARG, LUCKNOW.
2. Adv. / Consult
   MR.T.K.SRIVASTAVA
   311, MURLI BHAWAN, ASHOK MARG, LUCKNOW
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 & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI

COURT – III

CENTRAL EXCISE APPEAL NO. 2540 OF 2007-SM

[Arising out of Order-in-Appeal No. 33-CE/2007 dated 28.3.2007 passed by the Commissioner (Appeals), Central Excise, Lucknow]

For approval and signature:

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

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?	No.
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. International Transformer (P) Ltd., Appellants

Vs.

CCE, Lucknow Respondent

Appearance:

Shri T.K. Srivastava, Advocate for the appellants;
Shri S. Gautam, D.R. for the Revenue

Coram:

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

Date of hearing/decision: 7th July, 2009

FINAL ORDER NO. 691/2009 SM (BR) **dated**

Per P.K. Das:

The relevant facts of the case as per records, in brief, are that the appellants are engaged in the manufacture of Electrical Transformer and parts thereof under heading No. 8504 of the Schedule to the Central Excise Tariff Act, 1985. They are also engaged in repairing of old and damaged transformers. The appellants were availing Cenvat credit on Transformer oil used in manufacturing activities as well as in repairing job. It is revealed from the show cause notice that the appellants reversed the proportionate amount of credit availed against receipt of transformer oil which is used in repairing of old and damaged transformers. Show cause notice dated 2.2.2005 was issued proposing to demand of duty of Rs. 36,492/- for the period April, 2000 to March, 2002. It has been alleged that the appellants are required to reverse the Cenvat credit on transformer oil on the basis of transaction value as being paid by UPSEB in terms provided under Rule 3(4) of Cenvat Credit Rules, 2001. The original authority confirmed the demand of duty and imposed penalty of equal amount. Commissioner (Appeals) upheld the adjudication order.

2. Learned Advocate on behalf of the appellants submits that they reversed the credit in terms of Rule 6 of Cenvat credit Rules, 2001. He further submits that in the instant case, there is no removal of goods as such from the factory and, therefore, Rule 3(4) of the Cenvat Credit

Rules, 2001 would not apply. He further submits that there is no suppression of facts and, therefore, extended period of limitation would not apply. He also submits that the Commissioner (Appeals) has not given any finding on limitation.

3. Learned D.R. reiterates the findings of the Commissioner (Appeals). He submits that in this case the appellants removed the duty paid inputs for repair of transformers and, Rule 3(4) of the Rules would apply. He also submits that transformer oil was used in repairing job of transformers of UPSEB and, they are liable to reverse the credit on the transaction value of UPSEB as required under Rule 3(4) of the Rules. He also submits that reversal of credit is in respect of two different rates which is not acceptable and, they are liable to reverse the credit on the basis of transaction value of UPSEB.

4. After hearing both sides and on perusal of the records, I find from the show cause notice that the appellants reversed the proportionate amount of credit availed against receipt of transformer oil on the quantity of transformer oil used in repair of old and damaged transformers. The appellant maintained separate records in respect of Transformer Oil used in manufacturing activities as well as repairing work as required under Rule 6 of the Rules. There is no material available to show that the appellants removed the transformer oil as such from their factory. Rule 3(4) of the Rules provides that when inputs or capital goods on which Cenvat credit has been taken are removed as such

from the factory, the manufacturer of the final product shall pay an amount equal to the duty of excise which is leviable on such goods at appropriate rate to such goods on the date of such removal and on the value determined for such goods under Section 4 or Section 4A of the Act, as the case may be and such removal shall be made under the cover of central excise invoice referred in Rule 7. In the present case it is admitted fact that transformer oil used in the appellants own factory for repairing work and they have reversed the proportionate credit on their own and, therefore, Rule 3(4) cannot be invoked. Hence, demand of duty on the basis of transaction value of UPSEB is not sustainable.

5. In view of the above discussion, impugned order is set aside. Appeal is allowed with consequential relief.

(Dictated & pronounced in the Open Court.)

(P.K. DAS)
MEMBER (JUDICIAL)

RK