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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/516 /2007 – SM[BR] Date 04/08/2009

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

To :
C.C.E. ROHTAK

17-P, SECTOR-1, ROHTAK (HARYANA)

C.C.E. ROHTAK Appellant

Vs

M/S HARRISON AND HARLAJ LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 860 / 2009 –SM[BR] dated 17.7.2009

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent

M/S HARRISON AND HARLAJ LTD.

JATAL ROAD, PANIPAT

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 Appeal No.516 of 2007-SM (BR)

[Arising out of Order-in-Appeal No.362/NS/RTK/2006 dated 18.12.2006 passed by the Commissioner of Central Excise (Appeals),Gurgaon]

Date of Hearing/ Decision:17.07.2009

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.		NA
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?	:	Yes

CCE, Rohtak (Haryana) ...Appellant
(Rep. by Shri S.K. Bhaskar, SDR)

Vs.

M/s. Harrison and Harlaj Ltd. ...Respondent
(Rep. by Shri Bipin Garg, Advocate)

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

Final Order No.860/2009-SM(BR)/Dated:17.07.2009

Per P.K. Das:

Revenue filed this appeal against the order of the Commissioner (Appeals), whereby adjudication order was set aside and allowed the refund claim of Rs.2,84,593/- and Rs.4,56,380/- to the respondent.

2. After hearing both the sides and on perusal of the records, the main contention of the ld. DR is that Rule 18 of Cenvat Credit Rules, 2002 under which the respondents had granted rebate of duty paid on exported goods manufactured out of duty paid inputs provides rebate of duty paid on excisable goods or duty paid on manufacture of or processing of the goods. In other words, both rebate of duty paid on exported goods and refund of duty paid on inputs is not admissible. It is contended by the ld. DR that the respondents utilized the basic excise duty while paying duty on exported goods and availed rebate claim. Hence, refund claim on Additional Excise duty under Rule 5 of Cenvat Credit Rules is not permissible.

3. Ld. Advocate on behalf of the respondent relied upon the decision of the Tribunal in the case of Commissioner of Central Excise Vs. Indo Dane Textile Industries reported in 2007 (213) ELT 117 (T-D), which was upheld by the Hon'ble Punjab & Haryana High Court vide Order dated 12.10.2007 in Central Excise Appeal No.81 of 2007 (Commissioner of Central Excise, Rohtak Vs. M/s. Indo Dane Textile Industries).

4. In the case of Indo Dane Textile Industries Ltd. (supra), Revenue filed appeal before the Hon'ble High Court for determination of the question of law as under:-

> "Whether, Refund of Cenvat Credit paid on inputs (AED T&T) used in the manufacture of final

products exported under rebate claim under Rule 18 of Central Excise Rules, 2002 on payment of duty, is allowed under Rule 5 of Cenvat Credit Rules, 2002?"

5. The Hon'ble High Court dismissed the appeal filed by the Revenue. The findings of the Hon'ble High Court is as under:-

> " We have heard the learned counsel at a considerable length and are unable to find any legal infirmity in the view taken by the Commissioner (Appeals) or the Tribunal. The Tribunal has dealt in details as to how the refund claim made by the assessee was available within the four corners of rule 5 of the CC Rules 2002. It has rightly held that the question of execusion of Bond while making export was not raised by the Revenue at any stage and, therefore, that ground was not available as the assessee was not granted opportunity to meet such a plea. Moreover, on merit also it has been found as a fact that the assessee exported the goods by payment of excise duty under the Act for which rebate claim was made under Rule 18 and rebate is granted 'of duty paid' on the excisable goods contemplated by Rule 18 of CC Rules, 2002. The expression 'duty' as defined in the Act and the Excise Rules of 2002 would apply to the provisions of Section 3 of 1978, Act as has already been discussed in the preceding paras. It is on account of statutory definition. The situation would be the same with regard to its application to Cenvat Credit rules, 2002. However, any special duty may not be covered unless there is express intention to the contrary in the statute. Hon'ble the Supreme Court in the case of Union of India Vs. Modi Rubber Ltd. (1986) 4 SCC 66, has taken the view against the assessee by concluding that the special duty is not covered by the provisions of the Act. However, that view has been adversely commented upon by the later judgement of Hon'ble Supreme Court in the case of Collector of Central Excise, Jaipur vs. J.K. Synthetics, (2000) 10 SCC 393, on the ground that it failed to consider Section 3 of the Customs Tariff Act, 1975. Thus, we find that no question of law much less substantial question of law would arise for our determination. The claimed question is dependent on the findings as to how the refund claim made by the respondent was relatable to the

> additional excise duty which could not be utilized in clearance of the final products because final product was not made subject to such additional duty and that the inputs were used in the final product."

6. I find that the present appeal relates to the same question, which was decided by the Hon'ble High Court in favour of assessee and against the Revenue. As such, I do not find any reason to interfere the order of the Commissioner (Appeals). Accordingly, the appeal filed by the Revenue is rejected.

Order dictated and pronounced in open court on 17.07.2009.

(P.K. Das)
Member (Judicial)

ckp.