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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/3822/2006 – SM [BR] Date 04/08/2009

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

To :
C.C.E.CHANDIGARH
PLOT NO 19, SECTOR 17-C, CHANDIGARH.

C.C.E.CHANDIGARH Appellant
Vs
M/S OKAYA INDUSTRIES Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 868 / 2009 –SM[BR] dated 14.7.2009 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 OKAYA INDUSTRIES
INDUSTRIAL AREA, SECTOR-5, PARWANOO, DISTT- SOLAN(HP)
2. Adv. / Consult
MR.NAVEEN MULLICK,ADV
B-388, MEERA BAGH, N.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)
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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.3822 of 2006-SM (BR)

[Arising out of Order-in-Appeal No.812/CE/CHD/2006 dated 05.09.2006 passed by the Commissioner of Central Excise (Appeals), Chandigarh]

**Date of Hearing/ Decision: 14.07.2009**

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.
2. Whether it should 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

CCE, Chandigarh ...Appellants

(Rep. by Shri S.K. Bhaskar, SDR )

Vs.

M/s. Okaya Industries ....Respondent

(Rep. by Shri Naveen Mullick, Advocate)

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

Final Order No. 868/2009-SM(BR)/Dated:14.07.2009

**Per P.K. Das:**

Revenue filed this appeal against the order of the Commissioner (Appeals), whereby adjudication order was set aside.

2. The relevant facts of the case, in brief, are that the respondents are engaged in the manufacture of Colour Monitor. On 7.2.2003, the Central Excise Officers visited the respondent's factory and

conducted stock verification. The said officers detected shortage of 298 pieces of 15" CRT duty paid inputs involving Cenvat credit of Rs.70,328/-. The representative of the respondents could not explain the reasons for shortage and debited the duty. Subsequently, they explained that the said goods were damaged during the manufacturing process. The Original Authority confirmed the demand of duty and appropriated the amount as deposited by them. He also imposed penalty of equal amount under Section 11 AC of Central Excise Act, 1944. The Commissioner (Appeals) set aside the adjudication order. Hence, the Revenue filed this appeal.

3. Ld. DR on behalf of the Revenue reiterates the grounds of appeal. He submits that the shortage was detected during stock verification and the representative of the respondents admitted the shortage and debited the duty from Cenvat Account. Therefore, the appropriation of duty and imposition of penalty are justified. He also submits that the Commissioner (Appeals) had not considered the fact that the respondents voluntarily paid the duty.

4. Ld. Advocate on behalf of the respondents reiterates the findings of the Commissioner (Appeals). He submits that the Original Authority observed that the inputs were damaged during the manufacturing process of the final products i.e. colour monitor. He submits that the Commissioner (Appeals) rightly set aside the demand as it is well settled that there is no requirement for reversal of credit on the inputs damaged

during the process of manufacture. He relied upon the Larger Bench decision of the Tribunal in the case of Grasim Industries Vs. Commissioner of Central Excise, Indore reported in 2007 (208) ELT 336 (Tribunal-LB). He also relied upon the decision of the Tribunal in the case of Commissioner of Central Excise, Aurangabad Vs. Air Liquid India Holding Pvt. Ltd reported in 2009 (238) ELT 122 (Tribunal-Mumbai).

5. After hearing both the sides and on perusal of the records, I find that the Original Authority observed that the respondents are not entitled for availing Cenvat Credit on the quantity on inputs which were got damaged during the manufacturing process and the amount of Cenvat credit involved on the same was recoverable from them. The findings of the Original Authority is that the respondents had availed the Cenvat credit on the inputs which had not gone into in the manufacture of final products. I find that the Original Authority accepted the inputs got damaged during the process of manufacture of final products. The finding of the Commissioner (Appeals) is as under:-

> "I have carefully examined the case records including the appellants submissions made in writing and at the time of personal hearing and observe that as contended by the Appellants the Cenvat Credit reversal can only be asked under Rule 3(4) of Cenvat Rules, where there has been any removal of the inputs as such from the factory. In the present case, the goods were damaged due to manufacturing process undertaken by the Appellants in the factory itself and the same has also been admitted by the Adjudicating Authority in the impugned Order-in-Original. There is no provision under the Act which directs the assessee to reverse/debit the

credit taken on inputs which are damaged during the manufacturing process. There is no such allegation also in the show cause notice that the Appellants have removed or cleared the inputs without reversal or without payment of duty. The demand raised/confirmed in the impugned order is, therefore, illegal, hence no penalty also. This issue is squarely covered by the decision of CEGAT reported as 2006 (75) RLT -429.

The Order-in-Original is, therefore, set aside."

6. The Larger Bench of the Tribunal in the case of Grasim Industries (supra) held as under:-

> **5.** The issue is whether in cases where remission of duty was allowed in respect of goods which have been lost or destroyed by natural cause or by unavoidable accident, whether the input credit taken in respect of inputs used for such goods are to be reversed or not.
>
> **6.** We find that the Tribunal in the case of *Inalsa Ltd.* v. *CCE, New Delhi* (supra) held that the final product has not suffered duty only as a result of remission of duty given on fulfilling the conditions, therefore, under Rule 49, it is not to be equated to a general exemption from duty or goods being charged to nil rate of duty. Therefore, the credit in respect of inputs used in the manufacture of such goods need not be reversed. In the case of *Mafatlal Industries* (supra), the Tribunal agreed with the earlier view in the case of *Inalsa Ltd.* (supra) that remission of duty on finished goods cannot be equated with exemption to goods. However, it is further held that in case remissions granted to finished goods destroyed in fire, a manufacturer is not entitled for credit of duty in respect of inputs used in the manufacture of such goods. We find that the Tribunal in the case of *CCE* v. *Indchem Electronics* reported in 2003 (151) E.L.T. 393 has taken the view that inputs which were to be used in the manufacture of final product and the final product was destroyed due to fire and remission of duty was granted, the credit in respect of inputs used on such inputs is not desirable. The Revenue filed appeal against this order and the same was dismissed by Supreme Court reported in *CCE* v. *Indchem Electronics* reported in 2003 (157) E.L.T. A206.
>
> **7.** We find that reading of Rule 49 of Central Excise Rules, 1944 and Rule 21 of Central Excise Rules, 2002 which provides for remission of duty in respect of goods lost or destroyed by natural cause or by unavoidable accidents or in case goods become unfit for consumption or for marketing at any time before removal does not provide reversal of credit in respect of inputs used in the manufacture of such goods. The Modvat rules prohibits the credit of duty paid in respect of the inputs which are used in the manufacture of exempted goods or which are chargeable to nil rate of duty. The Tribunal in both the cases, that is *Mafatlal Industries* (supra) and in the case of *Inalsa Ltd.* (supra) held that in case the goods were destroyed due to natural cause or by unavoidable accident during handling or storage, cannot be equated with exemption to goods and the inputs can be considered to have been put to intended use for manufacture of the final product. Reading of rules under which remission is granted in respect of goods which were lost or destroyed by natural cause or by natural accident, does not provide any condition regarding reversal of credit taken in respect of inputs used on such goods, hence we are unable to support the view taken in the case of *Mafatlal Industries* (supra) whereby it has been held that assessee has to reverse the credit taken of inputs used in such goods on which remission is granted. Therefore, we approve the view of the Tribunal taken in the case of *Inalsa Ltd.* (supra) in this regard. The issue to the Larger Bench is answered in the above terms and the matter be placed before the Regular Bench.

7. In the present case, the Original Authority had not disputed that the inputs got damaged during the manufacturing process. Thus, it is evident that the inputs were used in or in relation to manufacture of the final product, within the factory of production. The inputs on which credit has been availed are used for final product destroyed during process of manufacture, would cover "in or in relation to manufacture of final product", there is no requirement of reversal of credit on such input.

8. In view of the above discussions, 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 & pronounced in open court on 14.07.2009.

( P.K. Das )
Member (Judicial)

Ckp.