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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/1144/2007 – SM[BR]   Date 17/08/2009

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

To :
C.C.E. CHANDIGARH (JALLANDHAR)
C.R.BUILDING, PLOT NO. 19, SECTOR 17-C,
CHANDIGARH.

C.C.E. CHANDIGARH (JALLANDHAR)   Appellant
Vs
M/S S.K.SACKS PVT. LTD.   Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 920 / 2009 –SM[BR] dated 29.7.2009 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 S.K.SACKS PVT. LTD.
   O/S CHATTIWIND GATE, AMRITSAR
2. Adv. / Consult
   NONE;-------------

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
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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. 1144 OF 2007-SM

[Arising out of Order-in-Appeal No. 331-CE/Appl/Jal/2006 dated 9.11.2006 passed by the Commissioner (Appeals), Central Excise, Jallandhar]

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

CCE, Jallandhar — Appellant

Vs.

M/s. S.K. Sacks Pvt. Ltd., — Respondent

Appearance:

Shri V.K. Saxena, Jt. C.D.R. for the Revenue;
None (written submissions) for the respondents

Coram:

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

Date of hearing/decision: 29th July, 2009

FINAL ORDER NO. 920/2009 SM (BR) **dated** ________

Per P.K. Das:

Revenue filed this appeal against order of the Commissioner (Appeals) whereby it has been held that the respondents are entitled to refund of unutilized credit of Rs. 4,98,588/- in cash.

2. Relevant facts of the case, in brief, are that the respondents filed a refund claim of pre-deposit amounting to Rs. 6,58,588/-. The original authority sanctioned the refund claim and the amount of Rs. 4,98,588/- was allowed to take credit ~~of~~ in Cenvat account. The respondents filed application to the original authority to grant refund of the said amount in cash as their factory was closed in June, 2003 and they have already surrendered their central excise registration in June, 2003 itself. Original authority rejected their prayer. The respondents filed appeal before the Commissioner (Appeals) which was allowed. Hence, the Revenue filed this appeal.

3. Learned Jt. CDR submits that Rule 5 of Cenvat Credit Rules would not allow the refund of Cenvat credit in cash. He further submits that the respondents debited this amount from their Cenvat account and, therefore, they are not eligible to get the refund in cash. In this context, he relied upon the decision of the Hon'ble Punjab & Haryana High Court in the case of Nahar Industrial Enterprises Ltd. vs. UOI, reported in 2009 (91) RLT 212 (P&H). He further submits that the Larger Bench of the

Tribunal in the case of Gauri Plastic Culture (P) Ltd. vs. CCE, Indore, reported in 2006 (202) ELT 199 (Tri.-Mum.) held that if the assessee is maintaining Modvat credit and is in a position to use the same in future clearances, it should be normally credited back in the same account from where it was debited i.e. RG-23A, Part II account.

4. The respondents filed written submissions and requested to decide the matter in their absence. The respondents relied upon the decision of the Tribunal as under:-

(1) DCM Fabrics vs. CCE, Jaipur –
2009 (239) ELT 139 (Tri.-Del.);

(2) CCE, Jaipur vs. Talforge Pvt. Ltd. –
2009 (239) ELT 172 (Tri.-Del.)

5. After hearing learned Jt. CDR and on perusal of the records, I find that the Commissioner (Appeals) allowed the unutilized credit of Rs. 4,98,588/- in cash because it is a case of closure of factory of the respondents and the respondents are not able to utilize this amount, if it is credited to their Cenvat credit account. The Tribunal in the case of DCM Fabrics (supra) following the decision of the Hon'ble Karnataka High Court in the case of UOI vs. Slovak India Trading Co. Pvt. Ltd., reported in 2006 (201) ELT 559 (Kar.) held that the assessee's factory is closed and surrendered their central excise registration and the Cenvat credit would be refunded in cash. I find that the Commissioner (Appeals) also allowed the refund in cash following the decision of the Hon'ble

Karnataka High Court. Learned Jt. CDR relied upon the decision of the Hon'ble Punjab & Haryana High Court in the case of Nahar Industrial Enterprises Ltd. (supra) wherein duty paid partly in cash through PLA and partly by debiting Cenvat Credit account. Hon'ble High Court held that Cenvat credit amount is to be refunded by way of credit in Cenvat credit account. In the present case, the respondent factory is closed and there is no scope for utilization of credit in the Cenvat credit account. So, the facts in the present case does not resemble with the facts of the decision of the Punjab & Haryana High Court and, therefore, the said decision will not apply in the present facts and circumstances of the case.

6. In view of the above discussion, I do not find any reason to interfere with the order of the Commissioner (Appeals). Accordingly, appeal filed by the Revenue is rejected.

(Dictated & pronounced in the Open Court.)

(P.K. DAS)
MEMBER (JUDICIAL)

RK