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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/1997/2007 -SM[BR] Date 08/09/2009

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

To :
M/S HIMACHAL WIRE INDS. PVT. LTD.
G.T. ROAD, DAMTAL, TEHSIL INDORA, DISTT.
KANGRA, H.P.

M/S HIMACHAL WIRE INDS. PVT. LTD. Appellant
Vs
C.C.E. CHANDIGARH Respondent

I am directed to transmit herewith a certified copy of **Final order No 1136 / 2009 -SM[BR]**. dated 25.8.2009

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. CHANDIGARH
   C.R. BUILDING, PLOT NO. 19, SECTOR 17-C, CHANDIGARH 160017
2. Adv. / Consult
   MR.JOY KUMAR
   FLAT NO 261/1,SEC 45-A,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)
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17. Guard file

Assistant Registrar
(SM Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-IV

Date of hearing/decision: 25.8.2009

Central Excise Appeal No.1997 of 2007-SM

Arising out of the order in appeal No.63-64/CE/ CHD/07 dated 23.3.2007 passed by the Commissioner (Appeals), Central Excise, Chandigarh.

For Approval and Signature:

Hon'ble Shri M. Veeraiyan, Member (Technical)

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	Yes
2	Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3	Whether their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

M/s Himachal Wire Industries Pvt. Ltd. ... Appellant

Vs.

C.C.E., Chandigarh .... Respondent

Appearance:

Shri Joy Kumar, Advocate for the appellants
Shri S. Gautam, Authorized Departmental Representative (SDR) for the Revenue

Coram: Hon'ble Shri M. Veeraiyan, Member (Technical)

Oral Order No. 1136/2009 SM Bn

Per M. Veeraiyan:

This is an appeal against the order of the Commissioner (Appeals) No. 63-64/CE/ CHD/07 dated 23.3.2007.

2. Heard both sides.

3. The appellants manufacture steel wires coated and uncoated, stay stranded wire, barbed wire and started availing the benefit of Notification No.50/2003 dated 10.6.03 with effect from 30.10.04. The proceedings were

initiated to order recovery of Cenvat credit of Rs.3,18,763/- attributable to inputs , inputs contained in the semi-finished or finished goods on which credit was availed and utilised and which were lying in the factory as closing stock as on 30.10.04. The original authority confirmed the demand and imposed penalty. Commissioner (Appeals) upheld the order of the original authority.

4. Learned Advocate submits that the very same issue involving the same Notification No.50/2003 dated 10.6.03 has been dealt with by the Tribunal vide Final Order No.315-316/06-Ex. dated 5.5.2009 in Appeal No.E/863/06 and 306/07 and it was held that the credit taken to avail during the period was valid and therefore, the same should not be ordered to be recovered. Learned advocate also relies on the decision in the case of HMT vs. C.C.E., Panchkula reported in 2008 (232) ELT 217 (Tri-LB).

5. The learned SDR submits that it is settled that once the goods are exempted , the question of allowing the credit on the inputs does not arise as settled by the Hon'ble Supreme Court in the case of Chandrapur Magnet Wires (P) Ltd. vs. C.C.E., Nagpur reported in 1996 (81) ELT 3 (SC). He also relies on the decision of the Tribunal in the case of Tractors and Farm Equipment Ltd. vs. C.CE.., Madurai reported in 2007 (79) RLT 384 (CESTAT-Che.). He also submits that the decision of the Larger Bench of this Tribunal in the case of H.M.T. vs. C.C.E., Panchkula reported in 2008 (232) ELT 217 (Tri-LB) dealt with the input credit legally taken and utilised on the final products and held that the same need not be reversed on the final product becoming exempt; that it did not refer to inputs lying as such or the inputs in the semi-finished goods or goods in process.

6.1 I have carefully considered the submissions from both sides. At the outset, it is to be noticed that that the decision of the Tribunal in the case of Tractors and Farm Equipment Ltd. cited supra and relied upon by the learned SDR has been overruled by the decision of the Larger Bench in the case of HMT cited supra. Interpretation by the learned SDR of the decision in HMT case was that the same applies only in respect of input credit legally taken and utilised on the dutiable final products. This interpretation is incorrect The ratio of the decision is that when the credit has been taken legally and utilised legally, there is no scope for recovery of the same. Even in respect of inputs lying as such, when the credit has been taken legally and utilised, the question of recovery of credit alleging that the same was taken illegally and improperly or utilised illegally and improperly does not arise. Further, the very same issue has been decided by the Tribunal in the case of M/s Purewal and Associates Ltd. wherein it has been held that demand taken need not be reversed when the party has opted for Notification No.50/2003 from a prospective date.

6.2 The relevant portion of the decision of the Larger Bench in the case of HMT is reproduced below:

> *"17. It is also contended that the Appellants violated Rule 6(1) of Rules 2002, which provides that the Cenvat credit shall not be allowed on such quantity of inputs, which is used in the manufacture of exempted goods, except certain circumstances as specified in the sub-rule (2) of the said Rule. Rule 6(1) of Rules 2002 is corresponding to Rule 57C and 57AD(1) of Rules 1944, Rule 6(1) of Rules 2001 and Rules 2004.*
>
> *18. In Modvat/Cenvat scheme, Rule 57C of Rules 1944 and the corresponding rules time to time restricted the availing of credit on such quantity of inputs, which are used in the manufacture of final products, which are exempted from the whole of duty of excise or chargeable to Nil rate of duty. Rule 57CC of Rules, 1944 was introduced in 1996 for adjustment of credit in inputs used in exempted final products or maintenance of separate inventory and accounts of inputs by the manufacturer. Rule 57CC of Rules, 1944 is corresponding to Rule 57AD (2), Rule 6(2) of Rules 2001, Rule 2002 and Rules 2004.*
>
> *19. The Hon'ble Rajasthan High Court in the case of Hindustan Zinc Ltd. v. Union of India reported in 2008 (223) E.L.T. 149 (Raj.), while dealing with Rule 57C and Rule 57CC of Rules 1944 relying on the decision of Supreme Court in the case of Dai Ichi Karkaria Ltd. (supra) and Kerala High Court decision in the case of Premier Tyres Ltd. (supra) held that if on the date of entitlement, there is no illegality or invalidity in taking credit of such Modvat/Cenvat credit, right to utilisation such credit against further liability towards duty become indefeasible and is not liable to be recovered in such contingency. The relevant portion of the said decision is reproduced below :-*
>
>> *'39. Upshot of this discussion in that prohibition against claiming Modvat credit on exempted goods or subject to nil rate of duty applies in case where such exemption from payment of Duty or nil rate of Duty on end product is predictably known at the time the recipient of inputs is entitled to take credit of duties paid on such inputs. The fact that due to subsequent notification or on contingency that may arise in future, the end product is cleared without payment of duty due to exemption or nil rate of duty does not*

> *affect the availing of Modvat credit on the date of entitlement. If on the date of entitlement, there is no illegality or invalidity in taking credit of such Modvat/Cenvat credit, the right to utilise such credit against future liability towards duty become indefeasible and it is not liable to be reversed in the contingency discussed above.'*
>
> *20. On perusal of the Rule 6 of Rules 2002 and the corresponding Rules, as mentioned above, we are of the view that the Appellants had correctly taken the credit and utilised, when the final product was dutiable and there is no requirement to reverse the credit on final product becoming exempt and such credit cannot be recovered under Rule 12 of Rules 2002 corresponding to Rule 57-I, 57AH of Rules 1944."*

6.3 The facts of the present case are substantially the same as the facts in the case of Purewal Associates Ltd.

7. In the light of the above, I find merit in the appeal by the party. Accordingly, I set aside the orders of the lower authorities and allow the appeal with consequential relief.

(M. Veeraiyan)
Member (Technical)

scd/