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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/1524/2007-1525/2007 – SM[BR] Date 15/10/2009

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

To :
C.C.E. INDORE
MANIK BAGH PALACE, POST BOX NO. 10, INDORE
452001 (M.P.)

C.C.E. INDORE — Appellant
Vs
M/S GARAH CONTAINERS IND. — Respondent

I am directed to transmit herewith a certified copy of **Final order No. 1257 - 1258 / 2009–SM[BR]** dated 12.8.2009 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
(1-2) M/S GARAH CONTAINERS IND.
INDUSTRIAL AREA, KUSMODA, GUNA (M.P)
2. Adv. / Consult SHRI K.K. ANAND ADV.
A-5, BASEMENT LAJPAT NAGAR-III
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
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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

<u>COURT – III</u>

<u>CENTRAL EXCISE APPEAL NO. 1524-25 OF 2007-SM</u>

[Arising out of Order-in-Appeal No. IND-I/30 & 31/2007 dated 20.02.2007 passed by the Commissioner (Appeals-I), Customs & Central Excise, Indore]

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, Indore — Appellant

Vs.

M/s. Garah Containers — Respondent

Appearance:

Shri R.K. Saini, D.R. for the Revenue;
Ms. Asmita Nayak, Advocate for the assessee

Coram:

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

Date of hearing/decision: 12th August, 2009

FINAL ORDER NO. 1257 - 1258/2009 SM (BR) **dated**

Per P.K. Das:

These appeals arise out of common order and, therefore, both are being taken up together for disposal.

2. The relevant facts of the case, in brief, are that the respondents are engaged in the manufacture of boxes, containers of paper and paper-board, cartoons. During the period October, 1999 to December, 2000 the respondents availed Modvat credit and cleared the goods on payment of duty, classifying the goods under Sub-heading 4819.19 of the Schedule to the Central Excise Tariff Act, 1985. By Adjudication Order dated 6.4.2000, the Deputy Commissioner classified the product under sub-heading No. 4410.90, attracting nil rate of duty. Show cause notices were issued proposing to recover Cenvat credit of Rs. 1,05,452.00 and Rs. 12,621.00 penalty and interest for the period October, 1999 to June, 2000 on the ground that the final product is classifiable under Sub-heading 4410.90 chargeable to nil rate of duty and irregular credit was availed, under Rule 57C of Rules. The classification of goods was finally decided by the decision of the Tribunal and it was held that goods are classifiable under Sub-heading 4410.90 attracting nil rate of duty. In view of that, original authority disallowed the Modvat credit availed on the exempted goods and imposed penalties on the respondents.

Commissioner (Appeals) set aside the adjudication order. Hence, Revenue filed these appeals.

3. Learned D.R. on behalf of the Revenue reiterates the findings of the Commissioner (Appeals). He submits that Rule 57-C of the erstwhile Central Excise Rules, 1944, provides that the assessee is not eligible to avail credit on the exempted final product. He submits that in the present case goods are liable to nil rate of duty and the respondents are liable to reverse the credit availed by them.

4. After hearing both sides and on perusal of the records, for the purpose of proper appreciation of facts, relevant portion of the findings of the Commissioner (Appeals) is reproduced below:-

> "According to the Appellants, the correct classification is 4819.19 only and that even if classification is to be made under 4410.90, then also the credit availed during October 1999 to April 2000 cannot be denied to them on account of the fact that they had paid excise duty on the product by classifying the same under 4819.19. In short, their argument is that the credit already availed prior to the issue of S.C.N. in May 2000 would still be eligible to them on account of payment of duty on the final product (round boxes). In this regard, I find that with reference to O.I.O. dated 06.04.2000 as well as three other subsequent orders dated 11.12.2001, 06.05.2002 and 24.12.2002 by which Modvat credit was disallowed to the Appellants, the matter was finally decided

by Commissioner (Appeals), Gwalior vide O.I.A. No. 169-172/2003 dated 19.12.2003 wherein he has upheld the classification of the product under 4410.90 and accordingly held that the disallowance of Modvat credit vide three orders are correct. Subsequently, however, the Tribunal, vide their Final Order No. 587-589/2005 date d11.07.2005 have set aside the order of the Commissioner (Appeals) dated 19.12.2003 in so far as it relates to Modvat Credit and penalty but upheld the classification of the product as decided by the original authority as well as the Appellate authority. In view of the decision of the Tribunal allowing the Modvat credit for the period July 2000 to November, 2001 for the past period also the same ratio will apply. Moreover, with reference to the order dated 31.10.2000, the dispute was during the period October, 1999 to April 2000 which is prior to issue of S.C.N. in May 2000 for changing the classification and denying the Modvat credit. Therefore, in terms of the Tribunal's Final Order dated 17.11.2005 in their own case, the Appellants would succeed in their appeal with regard to disallowance of Modvat credit and therefore, the impugned order date d31.10.2000 is held as not sustainable and therefore the same is set aside."

5. I find that the Tribunal by Final Order dated 11.7.2005 in respondent's own case following the decision of the Hon'ble Supreme Court in the case of CCE & Cus. (Appeals), Ahmedabad vs. Naryan

Polyplast, reported in 2005 (179) ELT 20 (SC) set aside the demand of duty. The relevant portion of the decision of the Tribunal is reproduced below:-

"We find that this issue had come up before the apex Court in the case of Commissioner of C. Ex. & Cus. (Appeals), Ahjemdabad vs. Naryan Polyplast – 2005 (179) ELT 20 (SC) and the Hon'ble Supreme Court did not interfere with the matter on a finding that dispute is merely technical and there was no revenue implication. We read the relevant parts of the order:-

"A show cause notice was accordingly issued to the respondent on 19th July, 1991 for recovery of the Modvat credit which had been utilized by the assessee. The demand raised in the show cause notice was confirmed by the Assistant Collector. The appeals preferred by the assessee were rejected by the Collector of Central Excise. However, the Customs, Excise and Gold (Control) Appellate Tribunal (CEGAT) reversed the findings of the Department and held, relying upon an earlier decision of Tribunal, that the assessee had the option not to avail of the exemption but to pay the duty and avail of the Modvat credit.

The Department is in appeal before us. Apart from the question whether the Department ought to be allowed to question the decision of the Tribunal had merely relied upon its earlier decision which decision has not been challenged by the

Department, we are of the view that there is no necessity to interfere with the decision of the Tribunal in view of the fact that it is admitted case as stated in the special leave petition, that the issue is merely technical and that there was no revenue implication."

5. In the present case, the dispute is purely technical and there is no revenue implication inasmuch as the payment of duty on otherwise exempted goods nullified the effect of credit taken. The ratio of the apex Court's decision in the case of Narayan Polyplast applies in favour of the assessee. Accordingly, the appeals are allowed after setting aside the impugned order in so far as it relates to Modvat credit and penalty. We further notice that the issue of classification remains settled by the order of this Tribunal in the assessee's own case vide Final Order No. 756/04/NB(C) dated 26.10.04 in Appeal No. E/1063/04/NB-C."

6. In view of the above discussion, I find that there is no reason to interfere with the order of the Commissioner (Appeals). Accordingly, both the appeals filed by the Revenue are rejected.

(Operative portion pronounced in the Open Court on 12.8.2009)

(P.K. DAS)
MEMBER (JUDICIAL)

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