TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

# 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/2703/2007 – SM[BR] Date 28/10/2009

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

To :
C.C.E. GHAZIABAD
C.G. O. COMPLEX-II, KAMLA NEHRU NAGAR,
GHAZIABAD 201302

C.C.E. GHAZIABAD Appellant
Vs
M/S SAMTEL COLOR LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1319 / 2009 –SM[BR] dated 14.9.2009 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 SAMTEL COLOR LTD.
VILLAGE CHHAPRAULA, BULANDSHAHAR ROAD, GHAZIABAD
2. Adv. / Consult SHRI V.LAKSHMIKUMARAN ADV.
B-6/10, SAFDARJUNG ENCLAVE 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 & SERVICE TAX APPELLATE TRIBUNAL,
## WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI

## COURT – III

## CENTRAL EXCISE APPEAL NO. 2703 OF 2007-SM

[Arising out of Order-in-Appeal No. 70-CE/GZB/2007 dated 20.07.2007 passed by the Commissioner (Appeals), Central Excise, Ghaziabad]

**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, Ghaziabad — Appellant

Vs.

M/s. Samtel Colour Ltd., — Respondents

**Appearance:**

Shri Sunil Kumar, JDR for the Revenue;
Shri Ravi Raghavan, Advocate for the respondents

**Coram:**

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

**Date of hearing/decision: 14th September, 2009**

**FINAL ORDER NO.** 1319/2009 SM (BR) **dated** ______

**Per P.K. Das:**

After hearing both sides and on perusal of the records, it is seen that the Tribunal in the respondent's own case held that the goods used as paints used on floor of production hall is eligible for Cenvat credit as input under Cenvat Credit Rules, 2001/2002 which is duly reported in 2005 (192) ELT 372 (Tri.- Del.). In view of the decision of the Tribunal the original authority sanctioned the refund claim. Revenue filed appeal before the Commissioner (Appeals) which was dismissed. Hence, the Revenue filed this appeal.

2. Contention of the learned JDR is that the Revenue filed appeal before the Hon'ble High Court at Allahabad against the order of the Tribunal as reported in 2005 (192) ELT 372 (Tri. – Del.). The finding of the Commissioner (Appeals) is reproduced below:-

"I find that the adjudicating authority has passed the impugned order by keeping within the limits of judicial discipline. The principles of judicial discipline requir3e that the orders of higher authority are required to be followed unreservedly by the subordinate authority. Even if an appeal is filed, it cannot furnish a ground for not following the order of the superior forum unless the operation of the order has been stayed by a competent higher forum. The same was held by the Hon'ble Gujarat High Court in Topland Engines (P) Ltd. vs. UOI [2006 (199) ELT 209

(Guj.)]. The Hon'ble High Court followed the law laid down in Kamlakshi Finance Corporation Ltd. case [1991 (55) ELT 433 (S.C.)] wherein the Hon'ble Apex Court observed that "the mere fact that the order of the appellate authority is not acceptable to the department... and is the subject matter of an appeal can furnish no ground for not following it unless its operation has been suspended by a competent Court. Rule is not followed, the result will only be undue harassment to assessees and chaos in administration of tax laws."

3. I agree with the findings of the Commissioner (Appeals). Revenue filed appeal before the Hon'ble High Court cannot be a ground for rejection of refund claim. Hence, 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