

**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/2825/2007 – SM[BR]

Date 29/10/2009

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

To :  
M/S HINDUSTAN UNILEVER LTD  
(FORMERLY M/S HINDUSTAN LEVER LTD),  
NARSINGHPUR ROAD, CHINDWARA (MP)  
2. M/S HINDUSTAN UNILEVER LTD, 1  
480001

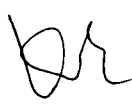
M/S HINDUSTAN UNILEVER LTD

Appellant

Vs  
Respondent

C.C.E BHOPAL

I am directed to transmit herewith a certified copy of **Final order No. 1340 / 2009 –SM[BR]** dated 8.10.2009  
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 BHOPAL

HOSHANGABAD ROAD, 48, ADMINISTRATIVE AREA, AREA HILLS, BHOPAL (M.P.) 462011

2. Adv. / Consult MS. APARNA HIRANDAGI ADV.

POST OFFICE BUILDING, 2 ND FLOOR

ANDHERI-KURIA ROAD. J.B. NAGAR ANDHERI [EAST] MUMBAI

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 Publications 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 Kuni, New Delhi - 110070

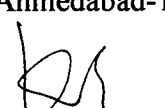
13 Taxmann Allied Service Pvt Ltd., 21/35, West Puniabi Bagh, New Delhi - 110026

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 (Harvana)

16 Office Copy

17 Guard file

  
Assistant Registrar  
(SM Appeal Branch)

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**  
**West Block No.2, R. K. Puram, New Delhi-66**  
**COURT-III**

Date of hearing/decision: 8.10.2009

Excise Appeal No. 2825 of 2007-SM

[Arising out of Order-in-Appeal No.80/CE/Appeal/Bhopal/07-08 dated 14.8.2007 passed by the Commissioner (Appeals), Central Excise, Bhopal].

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 should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? | M    |
| 3 | Whether Their Lordships wish to see the fair copy of the Order?                                                                       |      |
| 4 | Whether Order is to be circulated to the Departmental authorities?                                                                    | y f. |

M/s. Hindustan Unilever Ltd.

Appellants

Vs.

Commissioner of Central Excise.  
Bhopal

Respondents

**Appearance:**

Ms. Aparna Hirandagi, Advocate for the Appellants  
Shri V.K. Saxena, Jt.CDR for the Respondents

**Coram:** Hon'ble Shri P.K. Das, Member (Judicial)

Oral Order No. 1340/2009 SMC BJ**Per P.K. Das :**

Relevant facts of the case as per record, in brief, are that the appellants are engaged in the manufacture of detergent classifiable under heading No. 3401 and 3402 of the schedule to the Central Excise Tariff Act, 1985. A show cause notice dated 4.12.97 was issued proposing to disallow modvat credit of Rs. 4,28,899/-. It has been alleged that the appellants have taken the credit on inputs namely, flow aid silica polymers during the period from June, 1997 to August, 1997 without filing declaration under Rule 57 G of erstwhile Central Excise Rules, 1944. Original authority confirmed the demand of duty which was upheld by the Commissioner (Appeals). The Tribunal by order No. A/2021/III/SMC/WZB/2005 dated 23.12.2005 set aside the adjudication order and remanded the matter to the original authority to decide after taking into consideration the decision as mentioned in the said order. In the denovo proceedings adjudicating authority dropped the demand of duty. Revenue filed the appeal before the Commissioner (Appeals) whereby the adjudication order was set aside. Hence, the appellant filed this appeal.

2. Learned Advocate on behalf of the appellant submits that they have filed declaration under Rule 57G of the said Rules in respect of inputs 'PPT Silica'. She submits that the supplier supplied the said inputs in different brand names like Flow Aid Silica Polymer, PPT Silica . She also submits that they had produced the certificate from the Production Manager and

literature to establish that "Flow Aid Silica Polymer" and "PPT Silica" are the same. She also submits that the Commissioner (Appeals) observed that the decision of the Larger Bench of Hon'ble Tribunal in the case of Kamakhya Steels (P) Ltd. vs. CCE, Meerut [2000 (121) ELT 247 (Tri-LB)] would not apply retrospectively which is not correct. She submits that the period in dispute in the case of Kamakhya Steels Ltd. is 1994 [prior to amendment of Rule 57 G(11) of erstwhile Central Excise Rules]. She submits that the decision of the Larger Bench in the case of Kamakhya Steels (supra) would apply retrospectively. In this connection, she relied upon the decision of the Tribunal in the case of Citizen Electricals (P) Ltd. vs. CCE, Delhi [2002 (141) ELT 175 (Tri-Del)].

3. Learned Jt. CDR reiterates the finding of the Commissioner (Appeals). He submits that in this case, no declaration was filed. He submits that flow aid silica polymer was classifiable under 2842.00 and the declaration filed on PPT silica classifiable is under 2811.90. He submits that the description of the inputs and sub-heading are different and therefore, the Commissioner (Appeals) rightly set aside the adjudication order.

4. After hearing both sides and on perusal of the records, I find from the adjudication order that the appellant contended that "PPT silica" and "Flow Aid Silica Polymer" can be used interchangeably. They have produced technical write up as also analysis report of these two products which clarified that these inputs are same for usage only. The contention of the appellant is that the inputs supplier supplied these inputs in different trade name. The Commissioner (Appeals) observed that the decision of the Larger

Bench of the Tribunal in the case of Kamakhya Steels (supra) covers an intimation where declaration under Rule 57G is not filed. It is also observed that the case of Kamakhya Steel would be applicable only for the period after amendment to the provisions of Rule 57T and 57G. ~~is not filed~~. I am unable to accept the finding of the Commissioner (Appeals). It is seen that the dispute before the Larger Bench was prior to amendment of Rule 57(G)(11) of the Rules and held that the amendment of Rule 57G would apply. I have noted that the Tribunal in the case of Citizen Electrals (supra) held that amended Rule 57G(ii) as on 9.2.99 would apply retrospectively. In this connection, the relevant portion of the said decision is reproduced below:-

5. I have examined the submissions. I note that the appellants had declared the input in question as "brass parts" in their declaration dated 13-4-94 filed under Rule 57G. The credit was taken only subsequently. The authorities below did not accept the description "Brass parts" as correct declaration of Brass Gutka. A Larger Bench of this Tribunal, in the cited case of *Kamakhya Steels (P) Ltd.* (supra) considered a similar question and decided thereon in the light of Board's Circular dated 23-2-99 and Notification No. 7/99-C.E. (N.T.), dated 9-2-99. The Notification had amended Rule 57G by providing that credit under sub-rule (2) of the Rule should not be denied on the ground that the declaration filed under sub-rule (1) did not contain all the details required to be contained therein. Though the period of dispute involved in the case before the Larger Bench was prior to 1999, the Bench remanded to the adjudicating authority the question whether Modvat credit on inputs was admissible to the assessee in the light of the amended provisions of Rule 57G read with the Board's Circular dated 23-2-99. In other words, the amended provisions of Rule 57G

were applied retrospectively. This could very well be done in the instant case as well. The only ground for denial of credit on Brass Gutka in the present case is non-declaration of the input. The input was admittedly declared as "Brass parts" but the same has not been accepted by the authorities below. According to the amended provisions of Rule 57G, even if the declaration under sub-rule (1) does not contain all the details required to be contained therein, Modvat credit shall not be denied. In view of this provision, the denial of Modvat credit to the present assessee on Brass Gutka on the ground that the item was not covered by the declaration "Brass parts" cannot be sustained. Therefore, following the Larger Bench view, I set aside the decision of the lower appellate authority in relation to Modvat credit on Brass Gutka and allow this appeal.

5. In view of the above discussion, the order of the Commissioner (Appeals) cannot be sustained. Accordingly, the same is set aside. The order of the original authority is restored. Appeal is allowed with consequential relief.

( P.K.Das )  
Member(Judicial)