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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/2008/2007 – SM[BR] Date 30/10/2009

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

To :
M/S SESAME FOODS PVT. LTD.

RIICO INDL. AREA, NEEMRANA, DISTT. ALWAR

M/S SESAME FOODS PVT. LTD. Appellant

Vs

C.C.E. JAIPUR I Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1350 / 2009 – **SM[BR]** dated 23.10.2009 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. JAIPUR I
   N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.
2. Adv. / Consult
   MR.PANKAJ MALIK
   CHARTERED ACCOUNTANTS 207-208, SHREE GOPAL TOWER, KRISHNA MARG, C-SCHEME, JAIPUR-[illegible]
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)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO.II

E/Appeal No.2008/2007-SM(Br)

(Arising out of order in appeal No.24/GRM/CE/JPR.I/2007 dated 21.2.2007 passed by the Commissioner of Central Excise (Appeals), Jaipur)

M/s Sesame Foods Pvt Ltd — Appellant

Vs

CCE, Jaipur — Respondent

Appeared for Appellant : Shri Atul Gupta, Company Secy
Appeared for Respondent : Shri Sunil Kumar, SDR

Date of Hearing: 22.10.09

Coram: **Hon'ble Mr.D.N. Panda, Judicial Member**

Final Order No. 1350 /2009 SM(Br)

Per D.N. Panda:

The grievance of appellant is that when the Cenvat credit remained un-utilized by virture of export ~~as~~ by a 100% EOU, the appellant should not face hardship to get Cenvat credit refund of Rs.19,414/-. Shri Atul Gupta submits that he got support for his contention from the judgment of the Hon'ble Karnataka High Court in the case of CCE, Bangaalore Vs. ANZ International reported in 2009 (233) ELT 40 (Kar) and also the Tribunal's decision in the case of Jobelle Vs CCE Mumbai-I reported in 2006 (203) ELT 627 (Tri.-Mum). On the other hand, Revenue fails to appreciate the claim of the respondent denying the refund.

2. Heard both sides.

3. The Hon'ble Karnataka High Court has appreciated the difficulty of non-utilisation of Cenvat credit by an exporter. The Court laid down the proposition that when an assessee is unable to utilize the Cenvat credit by virtue of export, the refund is not deniable. It is clear from the appellate order that was passed in the year 2007 when the learned Commissioner had no advantage of reading the decisions cited by the learned Counsel today. Following the ratio laid down by the Hon'ble Karnataka High Court, the first appellate order is set aside and the appeal is allowed.

(Order dictated and pronounced in the open Court).

(D.N. Panda,
Judicial Member

MPS*