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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/1446/2009 – SM [BR]** Date **15/04/2011**

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

To :
C.C.E. RAIPUR

CENTRAL EXCISE BUILDING, DHAMTARI ROAD,
TIKRAPARA, RAIPUR 492001.

C.C.E. RAIPUR Appellant

Vs

M/S HI-TECH ABRASIVES LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No. 187 / 2011 –SM[BR]** dated 22.3.2011 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 HI-TECH ABRASIVES LTD.
740-I, SECTOR-B, URLA
INDUSTRIAL AREA, RAIPUR
(C.G.)

2. Adv. / Consult
NONE;----------------

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
9. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi -
10. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
13. Office Copy
14. Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

COURT NO. III

Date of Hearing : 22.3.2011

Excise Appeal No. 1446 of 2009-SM

[Arising out of the Order-in-Appeal No. 37/RPR-I/2009 dated 26.3.2009 passed by the Commissioner (Appeals), Central Excise, Raipur]

Coram:

Hon'ble Mr. Mathew John, 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?	
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3.	Whether their Whether their Lordships wish to see the fair copy of the order?	
4.	Whether order is to be circulated to the Department Authorities?	

CCE, Raipur — Appellant

Vs.

M/s Hi-Tech Abrasives Ltd. — Respondent

Appearance:

Appeared for Appellant : Shri S.K. Bhaskar, DR
Appeared for Respondent : None

CORAM: Hon'ble Mr. Mathew John, Member (Technical)

Final Order No. 187/2011 SM(BR) dated............

Per Mathew John:

In this case the Appeal is filed by the department contesting that the Commissioner (Appeal) has remanded the matter to the adjudicating authority for decision when under section 35A of the Central Excise Act giving him power to decide Appeals, the

Commissioner (Appeal) has no power to remand a case. The Department relies on the decision of Apex Court in **MIL India Vs. CCE Noida**-2007 (210) ELT 188 SC to support their contention.

2. The issue involved in this matter is the eligibility for Cenvat credit on service tax paid on outward freight paid by the Respondent for the period from 12/2005 to 3/2008. The question is whether such credit will qualify as input service within the meaning given to the expression under Rule 2 (l) (ii) of Cenvat Credit Rules, 2004.

3. The operating part of the order of the Commissioner (Appeal) reads as under:

> "(i) I hereby allow credit of Rs.1,58,633/- (Rupees One Lac Fifty Eight Thousand Six Hundred Thirty Three only) to the Appellant on which the basic price is inclusive of freight and excise duty has been paid on such freight component, subject to verification. In order to facilitate scrutiny and veracity of the Chartered Accountant's Certificate dated 10.3.2009, the Appellant is directed to furnish a complete set of invoices/documents on the basis of which the Chartered Accountant had issued the said certificate. These invoices/documents shall be placed before the jurisdictional officers of Central Excise within seven days of the receipt of this Order-in-Appeal and a dated acknowledgement obtained. Consequently, the Jurisdictional Range Superintendent/Deputy/Assistant Commissioner of Central Excise Division, Raipur shall cause necessary scrutiny/verification of such invoices/records/documents to confirm the correctness of Chartered Accountant's certification. The entire process of scrutiny/verification shall be completed within one month of the date of receipt of this Order-in-Appeal. On verification, if in any of the invoices reveal the freight component has either been included as "extra" or has been recovered separately, the credit availed on such invoices shall be disallowed and duty relating thereto recovered along with penalty equivalent to the amount of duty as provided under Section 11 AC of the Central Excise Act, 1944 read with Rule 15 of Cenvat Credit Rules, 2004.

ii) I hereby disallow and order recovery of credit of Rs.1,35,103/- (Rupees One lac Thirty Five Thousand One Hundred Three only) under Rule 14 of Cenvat Credit Rules, 2004 read with Section 11A of the Central Excise Act, 1944 on outward freight in respect of sales to M/s Special Agencies Pvt. Ltd. Faridabad and others along with interest on the said amount adjudged as payable under Rule 14 of Cenvat Credit Rules, 2004 read with Section 11AB of the Central Excise Act, 1944."

4. The grievance of the department is that though the Commissioner (Appeal) has not used the word "remand" in the order, the order amounts to remanding the matter for verification. The contention of the department is that the Commissioner (Appeal) himself should have done the verification and decided the matter.

5. The Commissioner (Appeal) has seen sample invoices and a certificate from a Chartered Accountant and prima facie verified the issues relevant to the matter and he has given a clear finding that the Respondent is eligible for the credit and thus reversed the order of the Adjudicating authority. However he has given an opportunity to the lower authority to verify the records more exhaustively and to modify the quantum of credit allowed by him if the principle explained by him is not satisfied in respect of any individual invoice.

6. The revenue is not contesting the principle laid down by the Commissioner (Appeal). Neither have they pointed out any particular invoice where the principle laid down by him is not satisfied. Revenue's only contention is that all the verification to be done for deciding the matter finally should have been done by the Commissioner (Appeal).

7. Considered the arguments on behalf of the Department.

8. I do not find any infirmity in the impugned order because the issue involved has been decided by the Commissioner (Appeal) after doing reasonable verification. The quantum of credit allowed

also is specified. The opportunity given to the department is for doing an exhaustive verification and remedy error if any in the quantum of credit allowed by him. This cannot be considered as a remand of the matter. So I do not find any merit in the argument on behalf of the department.

9. However, it is likely that the adjudicating authority has not done any verification so far since they have filed an Appeal before this Tribunal. So the adjudicating authority is given time of two months from the date of receipt of this order to do any exhaustive verification, as ordered by the Commissioner (Appeal), if he desire to do. If on verification the adjudicating authority finds that the conditions specified by the Commissioner (Appeal) is not satisfied in any individual case he shall issue a notice within two months as aforesaid, to the Respondent for denial of credit giving specific invoices in respect of which the principle laid down by the Commissioner (Appeal) is not satisfied and the reason why he considers that the principle is not satisfied. If no such notice is issued the order of Commissioner (Appeal) shall become final. If any such Notice is issued within the said time limit it may be decided within one month from the date on which assesse furnishes reply. But the rest of the credit shall be allowed forthwith if not already allowed.

10. The Appeal is disposed of as per the above terms.

(Pronounced in open Court)

(Mathew John)
Member (Technical)