

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
SINGLE MEMBER APPEAL BRANCH

Date 16/06/2011

Appeal No. E/2448/2009 – SM[BR]

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

To :
M/S NATIONAL CHEMICAL & DYES CO.
D-43/22, SADANAND BAZAR, RAMAPURA,
VARANASI.
M/S NATIONAL CHEMICAL & DYES CO.

Appellant

Vs
Respondent

dated 8.6.2011

C.C.E ALLAHABAD

I am directed to transmit herewith a certified copy of Final order No. 325 / 2011-SM[BR]
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 ALLAHABAD

38,M.G.MARG, CIVIL LINES,
ALLAHABAD

2. Adv. / Consult SHRI BIPIN GARG ADV.
B-1/1289-A, VASANT KUNJ NEW DELHI

3. C.D.R

4. Bar association, CESTAT, New Delhi

5. Director Publications, Customs, Excise. I.P. Estate, New

6. M/s Centax Publications 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. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi -

9. Easy Service Tax Online Dot Com Pvt.Ltd.407A, Iscon Mall, Above Star India Bazar, Satellite Road,
Ahmedabad-15

10. LAWCRUX Advisors Pvt Ltd, LAW House, 1-8, Sector - 10, Faridabad 121003 (Harvana)

11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor, Vasant Arcade, Nelson Mandela Road,
Vasant Kunj, New Delhi - 110070

12. Office Copy

13. Guard file


Assistant Registrar
(SM Appeal Branch)

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

Date of hearing/decision 08.06.2011

For approval and signature:

Hon'ble Shri Justice R.M.S. Khandeparkar, President

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982.	Yes
2	Whether it should 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?	See
4	Whether Order is to be circulated to the Departmental authorities?	✓

Excise Appeal No. 2448 of 2009-SM

[Arising out of order in appeal No. 71/CE/Alld/2009 dated 09.06.2009 passed by the Commissioner (Appeals) Central Excise, Allahabad]

M/s National Chemicals & Dyes Co.

Appellants

Vs.

CCE, Allahabad

Respondent

Appearance:

Rep. by Sh. Mayank Garg & Ms. Sukriti Das, Advocates for the appellants.
Rep. by Sh. S.K. Bhaskar, DR for the respondent.

Coram: Hon'ble Sh. Justice R.M.S. Khandeparkar, President

final ORAL ORDER NO. 325/2011 SM (Bx)

Per: Shri Justice R.M.S. Khandeparkar:

Heard the ld. Advocate for the appellants and the DR for the respondent.

2. This appeal arises from order dated 09.06.2009 passed by the Commissioner (Appeals), Allahabad. By the impugned order, the appeal filed by the appellants against the order of the adjudicating authority has been dismissed. The Assistant Commissioner, Varanasi by his order dated 20.03.2008 had confirmed the demand of Rs. 1,91,335/- and Rs. 8755/- as well as Rs. 3456/- alongwith interest thereon besides equal amount of penalty under Rule 13(1) as well as equal amount of penalty under Rule 13(2) of the Cenvat Credit Rules, 2002. Being aggrieved, the appellants preferred appeal before the Commissioner (Appeals) which came to be dismissed except in relation to the demand of Rs.3456/- by the impugned order.

3. While assailing the impugned order, learned Advocate for the appellants submitted that the proceedings against the appellants were initiated essentially because the invoices based on which the credit was sought to be availed by the appellants did not contain relevant information regarding the valuation of the product and the duty suffered on that count. He further submitted that those were the dealer's invoices in the sense that the inputs originally were transported from the refinery to the depot at Kanpur and thereafter transported to the appellants factory. He further submitted that in order to establish that the credit availed by the appellants on the basis of the said invoices was equivalent to the duty suffered by the product, the appellants had produced copies of original invoices issued by the refinery for the purpose of storage of the product at depot, and the same disclose the necessary information including the duty amount suffered by the appellants. Ignoring this aspect, merely because the appellants did not

produce actual duty payment document i.e. copies of TR challan and PLA record of IOCL before the adjudicating authority or before the Commissioner (Appeals), the credit has been wrongfully denied to the appellants.

4. On the other hand, the DR submitted that bearing in mind the provision of law in relation to the entitlement of the credit and considering the fact that the invoices based on which the credit was sought to be availed did not disclose the relevant information regarding the valuation of the product accompanying the invoices as well as the duty element suffered by such product and even during the pendency of the proceedings appellants did not produce any material to establish that the inputs procured by the appellants were subjected to the payment of duty, no fault can be found with the impugned order. Attention was drawn to the finding of the adjudicating authority that pursuant to the report dated 13.11.2006 of the Superintendent, the IOC terminal Panki Kanpur had ceased to be the duty payment facility terminal having w.e.f. 5.09.2004 and such facility for payment of duty was available at Panipat refinery.

5. As rightly pointed out by the Id. Advocate for the appellants the availment of credit has to be justified on the basis of document as specified in Rule 9 of the Cenvat Credit Rules, 2004. Apparently, it refers to the invoices to be the basis for claiming the credit. Undoubtedly, in the case in hand, the invoices in favour of the appellants were dealer's invoices and the same did not disclose all the information in relation to the valuation and duty element suffered by the products which accompanied the invoices. At the

same time, it is also not in dispute that the deficiency was sought to be made good by the appellants by producing the invoices issued by the Panipat Refinery to the depot in relation to the same goods. Neither the adjudicating authority nor the Commissioner (Appeals) had ever doubted the credibility of any of such copies of invoices of Panipat Refinery. The fact that the goods were actually ^{received}~~reached~~ in the factory was not in dispute. Taking into consideration these aspects of the matter, in my considered opinion, the ld. Advocate for the appellants is justified in contending that the denial of credit was not in accordance with the provisions of law.

6. Taking into consideration the mandate of Rule 9 of the said Rules and applying the same to the facts of the case, I find that the denial of credit is unjustified. Hence, the appeal succeeds the impugned order alongwith the order of the adjudicating authority is set aside, with consequential relief.

[Justice R.M.S. Khandeparkar]
President

Pant