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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/2836/2007 – SM[BR] E / CO / 98 /2008-SM[BR] **Date 29/11/2011**

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 TECHNO CHEM ENTERPRISES, Respondent

I am directed to transmit herewith a certified copy of **Final order No. 818 / 2011-SM[BR]** dated 4.11.2011 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 TECHNO CHEM ENTERPRISES,
OPP. DEEP TAR UDYOG, G.T.
ROAD, CHHAPRAULA,
GHAZIABAD

13-12-11
ISSUED

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. 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.II, R.K. PURAM, NEW DELHI-110066

COURT NO. III

Central Excise Appeal No. 2836 of 2007-SM
AND E/C.O./98 of 2008-SM

[Arising out of Order-in-Appeal No. 71-CE/GZB/07 dated 31.7.2007 passed by the Commissioner (Appeals), Central Excise, Ghaziabad].

Date of Hearing: 4th November, 2011

For approval and signature:

Hon'ble Mrs. Archana Wadhwa, 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?	No
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?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

CCE, Ghaziabad — Appellant

Vs.

M/s. Techno Chem Enterprises — Respondent

Present for the Appellant : Mrs. R. Jagdav, SDR
Present for the Respondent : None

Coram: Hon'ble Mrs. Archana Wadhwa, Member (J)

FINAL ORDER NO. 81/2011 SM (Br)

Per Archana Wadhwa:

Being aggrieved with the order passed by Commissioner (Appeals), Revenue has filed the present appeal. I have heard Smt. R. Jagdev, learned SDR appearing for the Revenue. Nobody appeared for respondents.

2. After hearing the learned SDR and on perusal of the records, it is seen that the original authority sanctioned the refund claim of Rs. 27,951/-. Revenue filed appeal before the Commissioner (Appeals) which was rejected. Hence, the Revenue filed this appeal.

3. The main contention of the learned SDR is that the respondents have shown excess quantity of inputs in ARE-1 to take the benefit of refund of Cenvat credit wrongly by including the amount of Cenvat credit of duty. On perusal of the order of the Commissioner (Appeals), it is seen that the goods were exported, which was not challenged by the Revenue in their grounds of appeal. The relevant portion of the order of the Commissioner (Appeals) is reproduced below:-

"The event of the export having been made – and the fact of the impugned inputs having been used in the manufacture of goods cleared for export – is not in di8spute. I find that the prescribed procedure has been largely followed by the respondents. Also, there is no prerequisite for establishing one-to-one correlation between inputs an dfinal products. The Hon'ble Apex Court, in Dai Ichi Karkaria case [1999(112))ELT 353(SC)], observed that it is not essential for the assessee to establish exact mathematical equation between inputs utilized and the finished goods manufactured. Similarly, the Hon'ble Apex Court has ruled in SAIL v. CCE [1996 (88) E.L.T. 314 (S.C.)] that all inputs "indicated for use" are eligible for credit even if there has been excess use or loss due to abnormal operating conditions. This very view has been taken in Union of India v. Indian Aluminium Co. Ltd.

[1995 (77) ELT 268 (S.C.)] wherein it has been observed that exact mathematical equation between quantity of raw material purchased and the raw material found in finished product is not permissible and should not be looked for. I further find that the goods have been correctly exported on ARE-1. The document ARE-2 is required when goods are exported under claim of rebate under Rule 18 of the Central Excise Rules, 2002 as per the procedure prescribed under Notification NO. 21/2004-CE(N.T.) dated 06.09.2004, Order dated 08.08.2005 passed by the adjudicating authority."

4. On going through the above findings as arrived on by Commissioner (Appeals) and the grounds of appeal raised by the Revenue in their memo of appeal, I find that the Revenue's case is based on arithmetical calculations of input output ratio and there is no evidence produced by Revenue to establish that the appellant had taken excess credit by showing excess receipts of inputs. In the absence of any evidence to that effect, findings arrived at by the Commissioner (Appeals) cannot be held to be perverse so as to interfere in the same. Accordingly, I reject the appeal filed by the Revenue.

(Pronounced in the open Court)

(Archana Wadhwa)
Member (Judicial)

RK