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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/894 /2008 – SM[BR] Date 13/04/2010

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

To :
M/S HINDUSTAN COCA COLA BEVERAGES PVT. LTD.
5TH KM STONE, MASURI-GULAOTHI ROAD,GHAZIABAD (U.P)
2. 3RD FLOOR, ORCHID CENTRE, DLF GOLF COURSE ROA

M/S HINDUSTAN COCA COLA BEVERAGES PVT. LTD. Appellant

Vs

C.C.E. MEERUT II Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 423 / 2010 –SM[BR] dated 7.4.2010 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. MEERUT II

   OPP. SAHEED PARK (NEAR ASHOK KI LAT) DELHI ROAD, MEERUT (UP)
2. Adv. / Consult SHRI VIKRAM SINGH ADV.
   C-17, ANAND NIKTAN, BENITO JUAREZ MARG
   NEW DELHI-21.

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
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Assistant Registrar
(SM Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-III

Date of hearing/decision: 7.4.2010

Central Excise Appeal No.894 of 2008-SM

Arising out of the order in appeal No.17-CE/MRT-II/2008 dated 24.1.2008 passed by the Commissioner(Appeals), Customs & Central Excise, Meerut II.

For Approval and Signature:

Hon'ble Shri M. Veeraiyan, Technical Member

1	Whether Press Reporter 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 CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
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

Hindustan Coca Cola Beverages Pvt. Ltd. ... Appellant

Vs.

C.C.E., Meerut II ... Respondent

Appearance:

Shri Vikram Singh, Advocate for the appellant
Shri S.K. Bhaskar, Authorized Departmental Representative (JDR) for the Revenue

Coram: Hon'ble Shri M. Veeraiyan, Member (Technical)

Oral Order No. 423/2010 SM(BR)

Per M. Veeraiyan:

This is an appeal against the order of Commissioner (Appeals) upholding the denial of credit taken by them on the basis of triplicate copy of bill of entry generated on EDI System.

2. Heard both sides.

3. The appellant imported the impugned goods and took credit on the basis of triplicate copy of bill of entry generated on EDI system. The original authority in pursuance of the show cause notice (the show cause notice also

proposed denial of credit in respect of other consignments on various grounds which have been decided in ~~their~~ favour of the party) denied the credit holding that in terms of Rule 57G(3)(k), the credit can be taken only on the basis of duplicate copy of bill of entry generated on Electronic Data Interchange System installed in the Customs or Central Excise Commissionerate. The said order has been upheld by the Commissioner (Appeals).

4. Learned Advocate submits that Rule 57G(3)(c) has prescribed "triplicate copy of bill of entry" as relevant document for the purpose of taking credit. There is no stipulation that the triplicate copy referred to in Rule 57G(3)(c) relates only to triplicate copy of bill of entry generated on manual system. He also submits that since in the initial stage of the EDI system some of the Commissionerates were not generating 3rd copy of the bill of entry, the Central Government included the duplicate copy of bill of entry generated on EDI also as document for the purpose of taking credit. In this context, he refers to the Circular of the Board, Circular No.157/68/95-CX dated 17.11.95 which reads as under:-

> ***"Subject: Availing of credit on duplicate copy of Bill of Entry generated on EDI systems - Regarding.***
>
> ***I am directed to refer to the provisions of Rule 57G providing that the triplicate copy of the Bill of Entry shall be used for taking Modvat credit. In this regard attention of the Board has been invited to the fact that consequent to the introduction of processing Bill of Entry on EDI system in the Delhi Commissionarate, triplicate copy of the Bill of Entry is not being generated. Under the EDI system only three copies of Bill of Entry are generated viz. original, duplicate and the exchange control copy and therefore difficulties are being faced by the manufacturers availing the credit of duty paid in such cases.***
>
> ***2. The issue has been examined by Board, with a view to resolving the difficulties in this regard. Board by virtue of the powers vested under Rule 57H (4) of the Central Excise Rules, 1944 hereby prescribes duplicate copy of the Bill of Entry generated on EDI system as a document for the purpose of allowing the credit under the said rule.***
>
> ***3. Pending cases may be decided in the light of above.***
>
> ***4. Trade and field formations may be informed suitably.***
>
> ***5. Please acknowledge the receipt of this circular".***

Learned Advocate also relies on the decision of the Tribunal in the case of India Cements Ltd. vs. C.C.E., Trichy reported in 2006 (205) ELT 170 in support of his contention.

5. Learned DR submits that inasmuch as Rule 57G specifies triplicate copy of bill of entry under sub-rule (3) (c) and duplicate copy of bill of entry generated on EDI system under sub-rule (3)(k), the triplicate copy referred to in sub-rule (3)(c) should be read as triplicate copy generated on manual system. Learned DR also submits that when the Rule prescribes a particular document, the appellant was required to produce the said document only to enable him to take credit.

6. I have carefully considered the submissions from both sides. The Circular relied upon by the learned Advocate for the appellant clearly shows divergence in practice in Customs formations regarding generation of triplicate copy of the bill of entry thus necessitating prescribing the duplicate copy generated on EDI system also as document for the purpose of taking credit. Sub-rule (3)(k) prescribing such duplicate copy as the relevant document has been done without amending the sub-rule (3)(c) of Rule 57G. Under these circumstances, I find merit in the submission by the learned Advocate. The decision of the Tribunal in the case of India Cement Ltd. also supports the claim of the appellant. In this connection, para 5 of the said decision is reproduced below:-

> ***"5. In Appeal No. E/I 119/2003, the challenge is against denial of capital goods credit on bearings as also against a penalty of Rs. 1,000/-. The credit was taken on the basis of triplicate copy of the Bill of Entry generated on EDI system. It has been denied on the ground that it should have been taken on the basis of a duplicate copy of the Bill of Entry. Ld. Consultant submits that in respect of any Bill of Entry generated on the EDI system in the Chennai Commissionerate of Customs, the proper Modvatable document is the triplicate copy of the Bill of Entry. In respect of some other Commissionrates of Customs, where a third copy of Bill of Entry is not generated on the EDI system, the proper document for availment of credit of CVD is the duplicate copy of the Bill of Entry. This submission of the Consultant appears to be supported by the Board's Circular No. 157/68/95-CX, dated 17-11-1995, wherein it was noted that the Delhi Commissionerate did not generate triplicate copy of Bill of Entry on EDI system and hence Modvat credit of CVD could be taken on the basis of duplicate copy of the document. The submission made by the Consultant with reference to the procedure followed in the Chennai Commissionerate of Customs has not been contested before me. In the circumstances, appellants are eligible for capital goods credit of CVD paid on bearings, on the strength of triplicate copy of Bill of Entry***

generated on EDI system. The impugned order is set aside and this appeal is allowed".

7. Further, in the present case, there is no dispute that the appellant has brought the duty paid imported goods and used them in the factory for manufacture. In view of the above, the appellant is eligible to take the credit.

8. Therefore, the appeal is allowed with consequential relief as per law.

(M. Veeraiyan)
Member (Technical)

scd/