TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD

Email : delhi@cestat.gov.in

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/363 /2008 – SM [BR] Date 05/01/2010

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

To :
C.C.E. ROHTAK

SCO NO,6 SECTOR 1, ROHTAK.

C.C.E. ROHTAK Appellant

Vs

M/S ANAND INTERNATIONAL Respondent

I am directed to transmit herewith a certified copy of **Final order** No. 4 / 2010 –SM[BR] dated 31.12.2009 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 ANAND INTERNATIONAL
PLOT NO. 191-192,SECTOR-25, HUDA-PART-II,PANIPAT
2. Adv. / Consult
MR.BIPIN GARG
B-1/1289,A-VASANT KUNJ, NEW DELHI
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,

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

COURT-III

Date of hearing/decision: 31.12.2009

Central Excise Appeal No.363 of 2008-SM

Arising out of the order in appeal No.496/KKG/RTK/2007 dated 12.12.2007 passed by the Commissioner (Appeals), Central Excise, Delhi III, Gurgaon.

For Approval and Signature:

Hon'ble Shri M. Veeraiyan, 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?	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

C.C.E., Rohtak ... Appellant

Vs.

M/s Anand Interenational .... Respondent

Appearance:

Shri Anil Khanna, Authorized Departmental Representative (SDR) for the Revenue and Shri Manish Saharan, Advocate for the respondent

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

Oral Order No. 04/2010 SM (BR)

Per M. Veeraiyan:

This is an appeal by the Department against the order of the Commissioner (Appeals) No. 496/KKG/RTK/2007 dated 12.12.2007.

2. Heard both sides.

3. The relevant facts, in brief, are that the respondents manufacture Made Ups falling under Chapter 63; fabrics which are inputs have suffered both BED and AED (T & T) and accordingly, cenvat credit of both the duties was taken by the manufacturer. The manufacturer exported the Made Ups on payment of duty and since the made ups were not subject to duty of AED (T & T) and since there was restriction in using credit of duty of AED (T & T)

taken only towards AED (T & T) payable on the finished product, the said credit could not be utilised by the manufacturer. They claimed refund of such unutilised credit in terms of Rule 5 of Cenvat Credit Rules, 2002 read with Notification No.11/2002-CE(NT) dated 1.3.2002 issued under Rule 5 of Cenvat Credit Rules, 2002. The original authority held that the manufacturer has exported the goods under claim for rebate of BED paid by them and therefore, they cannot avail the benefit of refund under Rule 5 of Cenvat Credit Rules. Commissioner (Appeals) did not agree with the said decision and relying on the decision of the Tribunal in the case of C.C.E., Rohtak vs. M/s Indo Dane Textile Industries - 2007 (213) ELT 117 allowed the appeal of the manufacturer.

4. Learned SDR relies on the decision of the Hon'ble High Court of Bombay in the case of C.C.E, Nagpur vs. Indorama Textiles Ltd. - 2006 (200) ELT 3 (Bom.). He seeks setting aside the order of the Commissioner (Appeals) and restoration of the order of the original authority.

5. Learned Advocate for the respondent, on the other hand, supports the order of the Commissioner (Appeals). He submits that the decision of the Commissioner (Appeals) has been made relying on the decision of the Tribunal in the case of Indo Dane Textile Industries cited supra which stands upheld by the Hon'ble High Court of Punjab & Haryana by their decision dated 12.10.2007 in Central Excise Appeal No.81 of 2007. He also relies on the decision of the Division Bench of the Tribunal in the case of C.C.E., Rohtak vs. Mittal International reported in 2009 (240) ELT 421.

6. The issue in the present appeal stands resolved by the order of the Tribunal in the case of Indo Dane Textile Industries. When clearance of final products for export was on payment of duty of only basic excise duty and claim for rebate, there was no bar to avail the refund of credit in respect of duty of AED (T & T) in terms of Rule 5 of the Cenvat Credit Rules, 2002. The same stands approved by the Division Bench of the Tribunal in the case of Mittal International cited supra. Further, the learned Advocate submitted that the Department's appeal against the decision of the Tribunal in M/s Indo

Dane Textile Industries has been dismissed by the Hon'ble High Court of Punjab & Haryana.

7. The decision of the Hon'ble High Court in the case of Indorama Textile Ltd is in entirely different context as it dealt with simultaneous claim of rebate of duty in respect of finished goods and rebate of duty in respect of inputs which have gone into the finished product. The decisions relied upon by the learned Advocate for the respondent, on the other hand, specifically relates to the refund of cenvat credit in terms of Rule 5 of Cenvat Credit Rules when the final product exported is not subjected to additional excise duty under Textile & Textile Articles Act.

8. In view of the above, I do not find any merit in the appeal of the Department. The same is rejected.

(M. Veeraiyan)
Member (Technical)

scd/