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/952 /2008 – SM[BR] Date 16/11/2010

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

To :
M/S HIM TEKNOFORGE LTD.
SAI ROAD, BADDI,DISTT. SOLAN (H.P.)

M/S HIM TEKNOFORGE LTD. Appellant

Vs

C.C.E. CHANDIGARH Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1238 / 2010 –SM[BR] dated 28.10.2010 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. CHANDIGARH
   C.R. BUILDING, PLOT NO. 19, SECTOR 17-C, CHANDIGARH 160017
2. Adv. / Consult
   MR.G.S.BHANGOO
   H.NO. 5, SECTOR-10A, CHANDIGARH.
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. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
10. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
11. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
12. LAWCRUX Advisors Pvt Ltd. LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
13. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(SM Appeal Branch)

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

Date of hearing/decision: **28.10.2010**

Excise Appeal No. 952 of 2008-SM

[Arising out of order-in-Appeal No. 121/CE/CHD/2008 dated 7.2.2008 passed by the Commissioner (Appeals), Central Excise, Chandigarh]

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?	No
4	Whether Order is to be circulated to the Departmental authorities?	Yes.

M/s Him Teknoforge Ltd. Appellant

Vs.

CCE, Chandigarh Respondent

Appearance:

Appeared for the Appellant - Shri Vikrant Kakaria, Advocate
Appeared for the Respondent - Shri K.P. Singh, SDR

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

Final Order No. 1238/2010 SM (BR)

Per Archana Wadhwa :

The appellant is engaged in the manufacture of rough forging under Chapter 73 of the Schedule to the Central Excise Tariff Act,

1985. It is seen that the said goods were cleared by them to ordinance factory under the cover of Central Excise invoices. The said goods were not found to be as per technical specifications of the ordinance factory, the same were returned to the appellant on the basis of "Nominal Issue Vouchers". As per the appellants, the said vouchers raised by the ordinance factories contained the requisite information including the details of the Central Excise invoices under which the goods were earlier removed by the appellants. The Excise invoices were also returned by the ordinance factory along with vouchers.

2. On return of the said goods, the same were entered by the appellant in their statutory records of inputs and credit was availed. Revenue raised an objection that availing of credit on the basis of Nominal Issue Voucher was not in accordance with law inasmuch as the said vouchers cannot be treated to be modvatable documents. Accordingly, proceedings were initiated against the appellants by way of Show Cause Notice dated 26.6.07 for the credit availed by the assessee during April 2004 to February 2006. The said Show Cause Notice culminated into an order passed by the Assistant Commissioner confirming demand of Rs.1,12,562/- by rejecting the Modvat credit so availed by them and imposing penalty of identical amount under Rule 15 of the Cenvat Credit Rules. On appeal against the above order, the same was confirmed by Commissioner (Appeals). Hence the present appeal.

3. After hearing both the sides represented by Shri Vikrant Kakaria, ld. Advocate and Shri K.P. Singh, ld. DR, I find that the sole objection of the Revenue is that the goods stand returned by the ordnance factory under the cover of Nominal Issue Vouchers, which is an invalid document for availment of credit. Lower authorities have also considered the assessee's plea that along with the said vouchers on their own invoices under the cover of which the goods were originally cleared have also been returned but have not accepted the same on the ground that the goods stand returned after a lapse of three to four years. The appellant's plea on limitation stands also rejected by the lower authorities on the ground that the fact of availing credit on the basis of Nominal Issue Voucher has not been disclosed to their Range Central Excise authorities.

4. Ld. Advocate appearing for the appellant relied upon the Tribunal's decision in the case of **Hitesh Plastic Pvt. Ltd. Vs. CCE, Vapi** reported in 2009 (243) ELT 419 as also on the Tribunal's decision in the case of Jindal Pvt. Ltd. Vs. CCE Order No. A/1496/2009/WZB/AHD. and Tribunal's decision in the case of **BAPL Industries Ltd. Vs. CCE, Coimbatore** reported in 2006 (198) ELT 587. The ratio of all above decisions is to the effect that as the provisions of Rule 16 allows the assessee to avail the credit of duty paid on the goods cleared by them, by treating the same as inputs the provisions of Rule 7, which specify the documents for the purpose of availment of credit in respect of inputs, would not apply

to the provisions of Rule 16. The said rule being a special provision enacted for receiving back the rejected final product, the availment of credit on the basis of Central Excise invoices issued by the manufacturer would be sufficient. Even in the present case, I find that there is no dispute about the receipt of the duty paid rejected final product. The technical objection that the credit stands availed on the basis of vouchers issued by ordinance factory (though the appellant also claimed the production of Central Excise invoices, which is not disputed by the Revenue) cannot be upheld inasmuch as the legislative intent as reflected in the said rule allows an assessee to avail Modvat credit of duty paid on the final product but subsequently received back as rejected goods. Such legislative intent cannot be defeated on the technical ground.

5. Apart from the merits, I find that the demand is also barred by limitation inasmuch as Show Cause Notice issued on 26.6.07 for the credit availed in April 2004 to February 2006, is clearly barred by limitation. The appellant had entered the rejected and returned final product into their account in the statutory record and have availed the Cenvat credit duly reflected in the records which were part of return filed for the month of November 2004. In fact, Show Cause Notice stand issued on the ground that scrutiny of ER-I return for the month November 2004 revealed that noticee had availed credit on the basis of invalid documents. As such, the proceedings were initiated against the appellant on the basis of ER-I return filed for the month of November 2004. In such a scenario,

no suppression or mis-statement can be attributed to the appellant with an intent to evade payment of duty. The notice having been raised beyond the normal period of limitation has to be held as barred by limitation.

6. In view of the above, I set aside the impugned order and allow the appeal with consequential relief.

(Pronounced in Court)

(ARCHANA WADHWA)
MEMBER (JUDICIAL)

RM

After the order was dismissed for non-prosecution and the order dictated, immediately, thereafter ld. Advocate Shri Vikrant Kakaria appeared and prayed for recalling the order by submitting that he got late as he came from Chandigarh. In view of the explanation of the ld. Advocate, I recall the order of dismissal and proceed to decide the appeal on merits.

1/11/10

(ARCHANA WADHWA)
MEMBER (JUDICIAL)

RM