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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/1905/2008 – SM[BR] E / CO / 356 / 2008-SM[BR] Date 30/11/2010

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

To :
C.C.E BHOPAL

HOSHANGABAD ROAD, 48, ADMINISTRATIVE
AREA, AREA HILLS, BHOPAL (M.P.) 462011

C.C.E BHOPAL Appellant

Vs

M/S SUPERPACK, Respondent

I am directed to transmit herewith a certified copy of **Final order No.**1314 / 2010-SM[BR] dated 10.11.2010 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 SUPERPACK,

   BAJAJGRAM, TEHSIL SAUSAR, DISTRICT CHHINDWARA (M.P)

2. Adv. / Consult SHRI V.LAKSMIKUMARAN ADV.
   B-6/10, SAFDARJUNG ENCLAVE 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 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: **10.11.2010**

Excise Appeal No. 1905 of 2008 & E/CO/356/2008-SM

[Arising out of Order-in-Appeal No. 83/BPL/2008 dated 16.6.2008 passed by the Commissioner (Appeals), Customs & Central Excise, Bhopal]

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

CCE, Bhopal — Appellant

Vs.

M/s Superpack — Respondent

Appearance:

Appeared for the Appellant - Shri Anil Khanna, SDR

Appeared for the Respondent - Shri Hemant Bajaj, Advocate

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

Final Order No. 1314/2010 SM (Br)

Per Archana Wadhwa:

Being aggrieved with the order passed by the Commissioner (Appeals), Revenue has filed the present appeal. I have heard Shri

Anil Khanna, ld. SDR appearing for Revenue and Shri Hemant Bajaj ld. Advocate appearing for respondent.

2. The original adjudicating authority confirming demand of duty of Rs.3,07,020/- against the respondent by denying the Modvat credit in respect of the inputs, which were not utilised by the assessee for the past four to five years. He observed that the said credit stands availed by the assessee on ~~date of~~ dead and non-moving raw material, which has to be considered as written off their books of account and as such not capable of being used in or in relation to the manufacture of final product. As such, by following the Board's circular No. 645/36/2002-CX. dated 16.7.2002, he denied the Modvat credit as also imposed penalty of identical amount upon the respondent.

3. On appeal against the above order, Commissioner (Appeals) took note of the Tribunal's decision in the case of **CCE Vs. Kinetic Motors Co. Ltd.** reported in 2005 (183) ELT 300 (Tri. Del.), laying down that the input are still lying in the factory premises, the credit of duty cannot be denied in respect of the same. He also took note of the other decision of the Tribunal in the case of **Bharat Heavy Electricals Ltd. Vs. CCE** reported in 2002 (50) RLT 208 and **M/s Hindustan Zinc Ltd. Vs. CCE, Visakhapatnam** Final Order No. 1625-1628/2004 dated 19.10.2004 allowed the assessees appeal.

4. The Revenue in their memo of appeal have not disputed the applicability of the Tribunal's decision relied upon by the Commissioner (Appeals). It stands pleaded that the Tribunal's

decision in the case of **Kinetic Motors Co. Ltd.** has not been accepted by Revenue and appeal against the same has been filed before the Hon'ble High Court of Madhya Pradesh. However, it stands fairly accepted by the ld. DR that there is no stay of operation of the said decision of the Tribunal.

5. In any case, I find that the Hon'ble Bombay High Court in the case of **CCE, Vs. Indian Petrochemicals Corn. Ltd.** reported in 2008 (226) ELT 339 (Bom.) has held that where the inputs are written off in the books of account, benefit of Modvat credit cannot be denied to the assessee. I also note that apart from the Tribunal decisions relied upon by the Commissioner (Appeals), there are number of other judgements laying down that Modvat credit cannot be disallowed in respect of inputs written off in the books of account. Once such reference can be made to the Tribunal's decision in the case of **CCE, Ahmedabad Vs. Ingersoil Rand (India) Ltd.** reported in 2009 (235) ELT 142. (Tri.-Ahmd.).

6. As the issue is squarely covered by umpteen number of judgements, in favour of the assessee, I find no infirmity in the view adopted by the Commissioner (Appeals). The Revenue's appeal is accordingly rejected.

(Pronounced in Court)

(ARCHANA WADHWA)
MEMBER (JUDICIAL)

RM