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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Appeal No. E/839 /2006 - EX[DB] Date **13/06/2011**

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

To :
M/S KITPLY INDUSTRIES LTD.
SHAHBAD ROAD, RAMPUR(UP)

M/S KITPLY INDUSTRIES LTD. Appellant

Vs

C.C.E. MEERUT II Respondent

I am directed to transmit herewith a certified copy of **Final order No.474/ 2011 EX[DB]** dated 08-6-11 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(Excise 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
MR.PRAVEEN SHARMA
KF-84, KAVI NAGAR, GHAZIABAD

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New Delhi
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 - 110005
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 (Haryana)
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
14. HON'BLE PRESIDENT.

Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing:20.01.2011

Date of decision: 8/6/11

Excise Appeal No.E/839 of 2006

(Arising out of Order-in-Original No.36/Comm/M-II/2005 dated 29.12.2005 passed by the Commissioner of Central Excise, Meerut-II).

M/s. Kitply Industries Ltd. Appellant

Vs.

CCE, Meerut-II Respondent

For approval and signature:

Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri Rakesh Kumar, Member (Technical)

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1. Whether Press Reporters may be allowed to see CESTAT (Procedure) Rules, 1982.

2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?

3. Whether Their Lordships wish to see the fair copy of the Order?

4. Whether Order is to be circulated to the Departmental authorities?

Appearance: Rep. by Shri Praveen Sharma, Advocate for the appellants.
Rep. by Shri I. Beg, DR for the respondent.

CORAM: **Hon'ble Justice Shri R.M.S. Khandeparkar, President**
Hon'ble Shri Rakesh Kumar, Member (Technical)

FINAL Order No.474/2011-EX../Dated: 08.06.2011

Per Rakesh Kumar:

The facts giving rise to this appeal are, in brief, as under:-

1.1 The appellant are manufacturer of various articles of plywood chargeable to central excise duty and have availed Cenvat credit of duty paid on inputs used in or in relation to the manufacture of final products. Two of their final products are Ceiling Tiles and Pre-laminated Particle Boards of Bagasse, which are chargeable to nil rate of duty and hence, are exempted goods for the purpose of Central Excise Rules, 1944 relating to Modvat. The common inputs used in or in relation to the manufacture of dutiable final products and exempted final products are Caustic Soda, Phenol, Formaldehyde Resin, etc. —————— The period of dispute in this is from March, 1997 to Jan. 2000. During the period of dispute, as per the provisions of Rule 57 CC, if common inputs are used in or in relation to the manufacture of dutiable final products and exempted final products, the manufacturer was either required to maintain separate account and inventory of the inputs used in or in relation to the manufacture of dutiable final products and the inputs used in or in relation to the manufacture of exempted final products and take Cenvat credit only in respect of those inputs used in or in relation to the manufacture of dutiable final products, but if he was not maintaining such account, he was required to pay an amount equal to 8% of the sale value of the exempted final products at the time of their clearance. In this case, the appellant were maintaining separate accounts and inventory of the inputs for manufacture of final products and exempted final products – Ceiling Tiles and pre-laminated boards, but the storage was common. The appellant at the time of receipt of the common inputs were, by some formula, determining the quantity meant for dutiable final products and were taking Cenvat credit only in respect of that quantity. But the storage of the common inputs meant for dutiable and exempted final products was common. The department was of the view that since storage of the inputs meant for dutiable final products and exempted final products was common, the requirements of Rule 57 CC (9) were not satisfied and hence, they were required to pay an amount equal to 8% of the sale value of the final products. On this basis, after issue of show cause notice, the demand of an amount of Rs.24,03,035/- in respect of clearance of exempted final products under Rule 57 CC was confirmed along with interest vide Order-in-Original dated 28.02.2002 passed by the Commissioner of Central Excise, Noida. On appeal being filed by the appellant against this order of the Commissioner, the Tribunal vide Final Order No.A/183/03-NB (C) dated 21.03.2003 held that Rule 57 CC (9) requires maintenance of separate account and separate inventory of the inputs meant for dutiable final products and exempted final products but separate storage of such inputs is not necessary. The Tribunal, however, accepted the Department's contention that the appellants should satisfy the revenue about the basis adopted by them for arriving at the quantum of the inputs used in the manufacture of exempted final products. The Tribunal, therefore, remanded this matter to the adjudicating authority only for this limited purpose. In course of de novo adjudication proceedings, the appellant submitted some formula regarding the inputs required for their exempted final products- Ceiling Tiles, Pre-laminated Particle Boards. The Commissioner, however, in do novo proceedings again confirmed the demand of an amount of Rs.20,43,480/-- in respect of Ceiling Tiles and Rs.3,59,554/- in respect of Pre-laminated Bagasse Board. Against this order of the Commissioner, the present appeal has been filed.

2. Heard both the sides.

3. Shri Praveen Sharma, ld. Advocate for the appellant, submitted that the appellant have taken Cenvat credit only in respect of the common inputs used in or in relation to the manufacture of the dutiable final products and for this purpose, the quantum of inputs required was being determined on the basis of a formula, that in course of de novo adjudication proceedings, this formula had been disclosed to the

department, that the data regarding the consumption of inputs in the manufacture of dutiable final products and exempted final products submitted by the appellant to the department had been sent to the jurisdictional Asst. Commissioner for verification, who submitted a report pointing out certain discrepancies, that it is this report of the Asstt. Commissioner which has been relied upon by the adjudicating authority in deciding the matter against them, that the appellant should have been provided an opportunity to make submissions in respect of that report, but no such opportunity was provided, that the scope of remand proceedings was very limited and as per the directions of the Tribunal, the Commissioner had exceeded his jurisdiction by going beyond the terms of remand laid down by the Tribunal, that the scope of remand proceedings was to ensure non-availment of Modvat credit on the inputs used in the exempted final products, but in the present case, the Commissioner has again confirmed the demand under the provisions of Rule 57 CC for which he had no authority, that statutory records maintained by the appellant, which were seized, clearly show that 86805 Kgs. of Phenol, 151240 Kgs. of Formaldehyed and 6650 Kgs. of Caustic Soda was used for the manufacture of Ceiling Tiles during the period of dispute, in respect of which the appellant had not taken the Modvat credit or the credit, if initially, had been taken, was duly reversed and since this is an authentic data as per the statutory records, resort cannot be made to hypothetical figures as per the standard formula and that since the Commissioner has again confirmed the demand under Rule 57 CC, in doing so, she has gone beyond the directions of the Tribunal in the remand order and, hence, the impugned order is not correct.

4. Shri I. Beg, ld. Departmental Representative, defending the impugned order by reiterating the Commissioner's findings pleaded that as per the provisions of Rule 57 CC not only the separate account and inventory of the inputs meant for dutiable final products and exempted final products was required to be maintained, but the inputs meant for dutiable and exempted final products were to be stored separately, that in any case, the data supplied by the appellant regarding the quantum of inputs used in or in relation to the manufacture of exempted final products was not correct and that in view of this, there is no infirmity in the impugned order.

5. We have carefully considered the submissions from both the sides and perused the records. While the demand of Rs.24,03,035/- had initially been confirmed against the appellant under Rule 57 CC on the ground that the appellant have not stored the inputs meant for dutiable and exempted final products separately, the Tribunal vide Final Order No.A/183/03 dated 21.03.2003 taking note of the fact that the appellant were maintaining separate accounts and inventory of the inputs meant for dutiable final products and exempted final products and on the basis of

same formula, were determining the quantity of the inputs required for manufacture of dutiable final products and were taking Cenvat credit only in respect of that quantity, has held that the provisions of Rule 57 CC regarding payment of 8% of the sale value of the exempted final products are not applicable as Rule 57 CC (9) do not require separate storage. However, the Tribunal remanded the matter to the original adjudicating authority only for ascertaining the quantum of inputs used in the manufacture of exempted final products and it is only for this purpose, the matter had been remanded to the Commissioner.

6. On going through the impugned order of the Commissioner, we find that the data regarding requirement of the inputs used in relation to the manufacture of exempted final products and dutiable final products had been given by the appellant to the Commissioner, but the same was forwarded to the jurisdictional Asstt. Commissioner who submitted some report expressing certain doubts about the same and the matter has been decided on the basis of that report of the Asstt. Commissioner. The Commissioner 's order does not indicate that the Asstt. Commissioner's report was made available to the appellant and they were given an opportunity to submit their reply in respect of the objections of the Asstt. Commissioner. In any case, when as per the order of the Tribunal, the provisions of Rule 57 CC were not applicable, it was wrong for the Commissioner to confirm the demand again under those provisions. What

the Commissioner had been directed to do was to ascertain as to whether the appellant had taken Cenvat credit only in respect of that quantity of inputs which had been used in or in relation to the manufacture of dutiable final products and if excess Cenvat credit had been taken by them on the quantity used in relation to the manufacture of dutiable final products, that much amount could have been demanded. But from the order of the Commissioner, it is seen that no such exercise had been done. In view of this, the impugned order is not correct and the same is set aside. The matter is remanded to the Commissioner for de novo adjudication strictly in terms of the directions of the Tribunal in its Order No.A/183/2003 dated 21.03.2003.

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Member (Technical)