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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/5360/2004 - EX[DB] Date **01/12/2011**

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

To :
C.C.E. INDORE
MANIK BAGH PALACE, POST BOX NO. 10, INDORE
452001 (M.P.)

C.C.E. INDORE Appellant

Vs

FLAX CHEMICALS LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.**989/2011 **2005 EX[DB]** dated 17.11.2011 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
FLAX CHEMICALS LTD.
PLOT NO.1, SECTOR-1,
GHIRONGI MALANPUR INDUSTRIAL AREA
DISTT. BHIND (M.P)

2. Adv. / Consult SH. B.L.NARSIMHAN ADV.
C/O FLAX CHEMICALS LTD.
PLOT NO.1, SECTOR,-1,
GHIRONGI MALANPUR
INDUSTRIES AREA DISTT. BHIND (M.P)

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 (Harvana)
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

Assistant Registrar
(Excise Appeal Branc

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. III

Excise Appeal No. 5360 of 2004

[Arising out of Order No. 169-R/2004 dated 28.9.2004 passed by the Member (L&J) CBEC, New Delhi]

For approval and signature:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Mathew John, Member (Technical)

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

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Commissioner of Central Excise Indore — Appellants

Vs.

M/s. Flex Chemicals Ltd. — Respondent

Appearance:

Shri N. Pathak, SDR for the Appellants
Shri B.L. Narsimhan, Advocate for the Respondent

CORAM:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Mathew John, Member (Technical)

Date of Hearing/decision : 17.11.2011

FINAL ORAL ORDER NO. 989/2011-EX

Per Archna Wadhwa (for the Bench):

The present appeal stand filed by the Revenue against the order of Commissioner vide which he has dropped the demand of Rs.9.63 crores approx. The said demand was raised against the appellant as 8% of the value of their final product ~~was~~ cleared without payment of duty on the ground that they have utilised common modvatable inputs for the manufacture of dutiable as also exempted final product.

2. It is seen from the impugned order of Commissioner that the demand gets set aside on the ground that there is no machinery provision in the law for recovery of such amount which is neither a duty nor modvat credit. He has followed the Tribunal's decision in the case of Pushpman Forgings vs. CCE as reported in [2002 (149) ELT 490].

3. At the time of hearing of the appeal, our attention stand drawn to the Larger Bench decision of the Tribunal in the case of Sterlite Industries (I) Ltd. vs. CCE Pune as reported in [2005 (183) ELT 353 (Tri-LB)] laying down that the goods manufactured on job work and cleared without payment of duty to the principal ~~principle~~ manufacturer, who further clears the same on payment of duty, are not to be considered as exempted product and as such not hit by provisions of Rule 57C of erstwhile Central Excise Rules. The said decision of the Tribunal stands confirmed by the Hon'ble High Court when the appeal filed by the Commissioner was rejected as reported in [2009 (244) ELT A 89 (Bom)]. Further, the matter also stands concluded by the Hon'ble

Punjab & Haryana High Court decision in the case of CCE vs. Happy Forging as reported in [2011 (265) ELT 197 (P& H)].

4. Accordingly, we set aside the impugned order with the consent of both the sides and remand the matter to the Commissioner for fresh decision in the light of the above declaration of law and after ascertaining ~~following~~ the factual position.

5. Revenue's appeal is allowed by way of remand.

(Pronounced in the open Court)

(Archana Wadhwa)
Member(Judicial)

(Mathew John)
Member(Technical)

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