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

REGISTERED / AD
Email : cestat08@gmail.com

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

Date **10/04/2012**

Appeal No. E/339 /2005 - EX[DB]

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

To :
M/S IPF VIKRAM INDIA LTD.
VILLAGE & POST OFFICE MAJRA , TEHSIL KHARAR,
DISTT. ROPAR,PUNJAB

M/S IPF VIKRAM INDIA LTD. Appellant

Vs

C.C.E. LUDHIANA Respondent

I am directed to transmit herewith a certified copy of **Final order No.** A/426/ **2012 EX|DB|** dated 04-4-12 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. LUDHIANA
CENTRAL EXCISE HOUSE, 'F'
BLOCK, RISHI NAGAR,
LUDHIANA 141001 (PUNJAB)

2. Adv. / Consult
MR.PRADEEP KUMAR MITTAL
171, CHITRA VIHAR, DELHI-110092

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-3
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

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No. 2, R.K. Puram, NEW DELHI

COURT No. I

Date of Hearing / Decision : 04.04.2012.

Hon'ble Shri Justice Ajit Bharihoke, President
Hon'ble Shri Rakesh Kumar, Technical Member

1	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the 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?	

Excise Appeal No.339 of 2005

[Arising out of Order-In-Appeal No.657/CE/Appeal/Ldh/04, dated 17.12.2004 issued by CCE, Ludhiana]

M/s IPF Vikram India Ltd. — Appellants
Versus
CCE, Ludhiana — Respondent

Coram: Hon'ble Shri Justice Ajit Bharihoke, President
Hon'ble Shri Rakesh Kumar, Technical Member

FINAL **ORAL ORDER No.** A/426/2012-EX(BR)

Present Shri P.K.Mittal, Advocate for the appellants.

Present Shri P.K.Sharma, DR for the respondent.

Per : Justice Ajit Bharihoke

This appeal is filed against the impugned order of Commissioner(Appeals) dtd. 17.12.04 whereby he partially accepted the appeal filed by the assessee maintaining the Modvat credit demand to the extent of Rs.6,35,398/- adjudicated by the adjudicating authority. He, however, reduced the penalty imposed on the appellants from Rs.5 lakhs to Rs.1 lakh.

2. Briefly facts relevant to the dispute in this appeal are that the Company by the name of M/s Indra Polyfab P.Ltd., a manufacturer of detergent power, stood merged with M/s Amar Polyfab P.Ltd. under the orders of Hon'ble Punjab & Haryana High Court. At the time of merger, Modvat credit to the extent of Rs.6,35,398/- was available in the account of M/s Amar Polyfab P.Ltd. It was lying unutilized in RG-23A, Part-II in the account of M/s Amar Polyfab P.Ltd. After the merger, the appellants M/s Amar Polyfab P.Ltd. wrote a letter dtd. 10.08.94 addressed to Superintendent, Central Excise, Kharar Range, Ropar, informing the department about merger of the companies and requesting for sanction, approval and amendment of the original registration certificate. Pursuant to the letter on 12.10.94 in the registration certificate of M/s Amar Polyfab P.Ltd., the name of the assessee was changed M/s Indra Polyfab P.Ltd. On 14.10.94, the appellants wrote another letter to Assistant Collector, Central Excise requesting them that Modvat declaration, classification list price declarations and other documents filed by M/s Amar Polyfab P.Ltd. before the merger, may be treated as that of M/s Indra Polyfab P.Ltd. w.e.f. 12.10.94. The appellants, however, did not file declaration under Rule 57H of Central Excise Valuation Rules. The appellants company subsequent to the merger utilized the aforesaid Modvat credit to the tune of Rs.6,35,398/- against the central excise duty payable by them for their finished goods,

3. Department took a view that in absence of declaration under Rule 57H and approval by the competent authority, the appellants company should not have utilized suo-moto the Modvat credit lying in the account of M/s Amar Polyfab P.Ltd. Accordingly, a show cause notice along with various other issues which are not relevant to present case, was issued. The appellants contested the show cause notice and stated that failure to file declaration under Rule 57H and seeking approval for utilization was only a technical lapse and for that demand raised in the show cause notice was not sustainable.

4. The adjudicating authority after considering the reply to the show cause notice as well as submissions of the parties confirmed the demand of Rs.6,35,398/- as an amount of wrongly availed credit by the appellants and also imposed penalty of Rs.5 lakhs on the appellants. On other issues also the demand was confirmed which is not relevant for the purpose of this appeal.

5. Feeling aggrieved by the order of the adjudicating authority, the appellants preferred an appeal. The appellate authority quashed the other demand but the demand of Rs.6,35,398/- was upheld. However, the penalty was reduced from Rs.5 lakhs to Rs.1 lakh.

6. Ld. Counsel for the appellants has drawn our attention to the copy of the order of the adjudicating authority filed today, (correctness of which is not disputed by ld. DR). In the said order, reply of the appellants to the show cause notice is reproduced thus :-

"1. That under Central Excise law and rules, it is the buyer of the goods who alone is entitled to take Modvat of duty paid on invoices.

2. That the duty paid inputs having been received by a manufacturer who has filled the requisite declaration under Rule 57G and who uses the inputs in the manufacture of the specified final products or contemplated under Rule 57A and in the manner laid down under Rule 57F is irrelevant to determine the eligibility of Modvat."

7. It is submitted by ld. Counsel for the appellants that perusal of this reply as also the copies of letters written by the appellants to the department dtd. 10.08.94 and 14.10.94 would show that nothing was hidden from the department, the fact of merger of M/s Amar Polyfab P.Ltd. with appellant company by the approval of Hon'ble Punjab & Haryana High Court was brought to the notice of the company. It is submitted that it is not the case of the department that M/s Amar Polyfab P.Ltd. stopped its production at any time before merger or that there was some doubt about the Modvat credit to the extent of Rs.6,35,398/- in the account of M/s Amar Polyfab P.Ltd. It is argued that M/s Amar Polyfab P.Ltd. has merged with M/s Indra Polyfab P.Ltd. and therefore it has become part of that company and as such the Modvat credit available in the account of M/s Amar Polyfab P.Ltd. could be legally utilized by the appellants. It is further submitted that non-filing of declaration under Rule 57H of Central Excise Valuation Rules in only a technical lapse which cannot be taken as an

argument to deny the adjustments of Modvat credit by the new company which has come into existence. Ld. Counsel further submits that purpose of declaration under Rule 57H is only to keep the department informed about the new development and entitlement of new company to seek adjustment against the Modvat credit. The appellate authority, it is submitted, has lost sight of this fact and he has confirmed demand by taking hyper-technical views about non-filing of declaration under Rule 57H. As such it is submitted that impugned order is not sustainable in the law. In support of his contention, ld. Counsel relied upon the judgement of Hon'ble Madras High Court in the matter of Chemicals and Plastics India Ltd. reported in 1993(68)ELT728(Mad.); Tribunal in the matter of Sushripada Chemicals reported in 1996(88)ELT109(Tri.) and also in the matter of TT Maps & Publications reported in 1997(90)ELT404(Tri.).

8. Shri P.K.Sharma, ld. DR appearing for the department on the other hand submits that the Commissioner(Appeals) has rightly dismissed the appeal on this issue because of non-compliance of Rule 57H of Central Excise Valuation Rules and suo-moto utilization of Modvat credit without seeking approval/ sanction from the department.

9. We have considered the rival contentions and perused the records.

10. The only issue for determination in this appeal is that when all other requirements are satisfied, whether the appellants can

be denied the benefit of Modvat credit lying unutilized in the account of the company which merged with the appellants by the orders of the Hon'ble High Court, only because of the appellants' failure to file declaration under Rule 57H of the Central Excise Rules and adjusting the Modvat credit in the account of merged company without seeking approval from the Commissioner. The facts in this case are not disputed by the respondent. Ld. DR has failed to point out that but for non-filing of declaration under Rule 57H of Central Excise Rules, the appellants would not have been entitled to adjust the Modvat credit available to the merged company against his production. Thus in our view, this is a case of purely a technical lapse. Had the appellants submitted the declaration, obviously, they would have been granted approval to adjust the Modvat credit available in the account of M/s Amar Polyfab P.Ltd. Not only this, the appellants had intimated the department promptly about the merger, they obtained an amended registration certificate and they also wrote a letter on 14.10.94 requesting that the declarations, classification lists, price declarations and other documents filed by M/s Amar Polyfab P.Ltd. may be treated as the declarations/documents filed by M/s Indra Polyfab P.Ltd. w.e.f. 12.10.94. Though above noted communication is not in the form prescribed under Rule 57H but it supplies all necessary information to the department. It is undisputed that adjustment of Modvat credit by M/s Amar Polyfab P.Ltd. was done after 14.10.94. Therefore, we are of the view that this is a case of technical lapse for which the appellants cannot be penalized. We are supported in our view by the judgement of Hon'ble Madras High Court in the matter of Chemicals and Plastics India Ltd. reported in 1993(68)ELT728(Mad.); Tribunal in the matter of Sushripada Chemicals reported in 1996(88)ELT109(Tri.) and also in the matter of TT Maps & Publications reported in 1997(90)ELT404(Tri.).

11. We, therefore, set aside the impugned order by accepting the appeal and the demand of Rs.6,35,398/- as well as penalty is also set aside.

(Pronounced in the open court)

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Technical Member

RK-I