

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

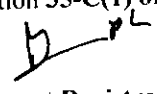
Dated: 01/11/2012

To

1. Appellant as per address in table below
2. Respondent as per address in table below

Final Order No. A/1277/2012-EX[DB] dated 05/10/2012

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the Central Excise and Salt Act, 1944.


**Assistant Registrar
EXCISE Appeal Branch**

S.No	Application	Appeal	Name and Address of Appellant	Name and Address of Respondent
1.	E/139/2005		EEI INDS. LTD. Plot No.- 86-92, Sector-I, Indl. Area, Govindpura, Bhopal, M.P.	C.C.E Bhopal Hoshangabad Road, 48, Administrative Area, Area Hills, Bhopal (M.P.) 462011

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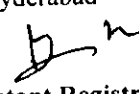
Copy To**1. Advocate(s) / Consultant(s):**

Rajesh kumar
24A, DDA SFS Flat,
Mount Kailash, East of Kailash,
New Delhi,
Delhi

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2. C.D.R 3. Office Copy 4. Guard File

5. Bar Association, CESTAT, Delhi
6. Director Publications, Customs, Excise. I.P. Estate, Delhi
7. M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3
8. Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17
9. Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005
10. Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15
11. LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
12. TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070
13. Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Ameer Pet, Hyderabad - 500038


**Assistant Registrar
EXCISE Appeal Branch**

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi.
Court No. 1

Date of hearing/decision: 05.10.2012

Hon'ble Sh. Justice Ajit Bharihoke, President
Hon'ble Sh. Rakesh Kumar, Member (Technical)

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. 139 of 2005

(Arising out of order in appeal No. 349-CE/BPL/2004 dt. 13.10.2004 passed by the Commissioner (Appeals), Central Excise, Bhopal).

M/s EEI Industries Ltd.

Appellants

Vs.

CCE , Bhopal

Respondent

Present Sh. Rajesh Kumar, Advocate for the assessee
Present Sh. M.S. Negi, AR for the Revenue.

CORAM : Hon'ble Shri Justice Ajit Bharihoke, President
Hon'ble Shri Rakesh Kumar, Member (Technical)

FINAL Order No. A/1277/2012-BE(BA)

Per. Rakesh Kumar:

The appellant are manufacturer of empty hard gelatine capsules chargeable to central excise duty under heading 3503 of the central excise tariff. Allegation against them is that during April 1997 they took cenvat credit of Rs.14,60,870/- in respect of various components of capital goods i.e. capsule manufacturing machine on the basis of invoices which did not bear the pre-printed sl. Nos. and also on the basis of invoices wherein it was mentioned that the goods were to be

delivered at Head Office whereas the actual delivery was received at the manufacturing unit of the appellant at Bhopal. On this basis, a show cause notice dated 27.10.1997 was issued to the appellant for recovery of allegedly wrongly taken cenvat credit of Rs. 14,60,870/- alongwith interest and also for imposing of penalty. This show cause notice was adjudicated by the Assistant Commissioner vide order-in-original dated 15.7.1998 whereby he confirmed the abovementioned cenvat credit demand alongwith interest and imposed penalty of Rs. 20,000/- on the appellant. On appeal to the Commissioner (Appeals), the Commissioner (Appeals) vide order-in-appeal dated 13.10.2004 upheld the Assistant Commissioner's order. Against this order of the Commissioner (Appeals) this appeal has been filed.

2. Heard both the sides.

3. Shri Rajesh Kumar, Advocate the Id. Counsel for the appellant, pleaded that in respect of nine invoices on the basis of which the cenvat credit of Rs.12,75,621/- has been denied; the department's objection is that the invoices do not bear pre-printed sl. number as per requirement of Rule 52A(6) of the Central Excise Rule and hence the same were not valid duty paying documents; that this objection of the department is not valid as the invoices nos. have been stamped by franking machine on the relevant invoices; that Larger Bench of the Tribunal in the case of **CCE, Ahmedabad vs. Satyen Dyes** -2001 (134) ELT 655 (Tri. LB) has held that when the serial number on the invoices have been stamped by franking machine or typed by typewriter, this to be treated as sufficient compliance of the statutory requirement of the rule 52A(6) of the Central Excise Rules; that same view has been taken in another Larger Bench decision of the Tribunal in the case of **Kamani Tubes Ltd. vs. CCE, Mumbai** – 2001 (134) ELT 665 (Tri. LB); that in this regard the Board's Circular vide No. 180/14/96-CX dated 7.3.1996. In view of difficulties being experienced by the trade, had

clarified that the invoices bearing stamp sl. No. by automatic franking machine are to be treated as valid documents; that in view of this position denial of cenvat credit of Rs. 12,75,064/- in respect of nine invoices is not correct; that cenvat credit of on the basis of three other invoices has been denied on a technical ground, that though those invoices described the consignee as factory of the appellant at Bhopal, in the body of the relevant invoices there is an endorsement "1st destination H.O." and because of said endorsement, the adjudicating authority as well as the Commissioner (Appeals) have wrongly assumed that the goods relating to those three invoices were dispatched to the head office of the appellant and not to the factory and on this basis they have wrongfully denied the cenvat credit to the appellant, that the authorities have wrongly denied cenvat credit of additional custom duty paid in respect of two bills of entry on a technical ground that in those bills of entry while the name of the assessee is "EEI Industries, Ground Floor C-2, Commercial Centre, New Delhi" whereas the cenvat credit has been availed by the manufacturing unit of the appellant at Bhopal, and that their objection of the department is not valid in view of the judgement of the Tribunal in the case of **Paharpur 3P vs. CCE, Meerut -2000** (116) ELT 107 (Tri.) wherein the Tribunal held that when the bill of entry was in the name of the Head office and the goods were received in the factory cenvat credit would still be admissible. He, therefore, urged us to set aside the cenvat credit demand, interest and penalty imposed upon the appellant.

4. Shri M.S. Negi, Id. AR for the department defended the impugned order and reiterating the finding in the impugned order emphasized that the invoices not bearing the pre-printed sl. No. could not be treated as valid document for the purpose of cenvat credit, and that when the bill of entry was in the name of the head office and the goods were received in the factory of the appellant, cenvat credit of additional custom duty was not admissible. With regard to the three

invoice where the consignee is described as the appellant factory at Bhopal but there is a mention of "1st destination head office", he pleaded that the credit would not be admissible on the basis of such document. He therefore pleaded that there is no infirmity in the impugned order.

5. We have considered the submissions from both sides and perused the record.

6. It is undisputed that the goods covered under the invoices and the bills of entry were actually received at the appellant's factory at Bhopal and those goods were used for manufacture of capsule making machine. It is also undisputed that excise duty/ additional custom duty was paid on those goods which are subject matter of the invoices and bills of entry.

7. As regards the dispute regarding admissibility of cenvat credit on nine invoices which according to the department were not bearing pre-printed sl. Nos. we find that these invoices do bear the sl. No. stamped by the franking machine. Two larger bench of the Tribunal in the cases of **CCE, Ahmedabad vs. Satyen Dyes** (supra) **Kamani Tubes Ltd. vs. CCE, Mumbai** (supra) have held that when the sl. no. on the invoices have been stamped by the franking machine or typed by typewriter it is sufficient compliance of the statutory requirement of Rule 52A(6) of the Central Excise Rule and such invoices are valid document for modvat credit. In view of these judgement of the Tribunal and also in view of the fact that there is no dispute that the goods have been received in the factory, we are of the view that the impugned order denying the cenvat credit in respect of these invoices is not correct.

8. As regards the denial of cenvat credit in respect of three invoices where though the consignee is appellant factory at Bhopal but there is also a mention of the appellant's Head Office at Delhi as the "1st destination Head office" We are of the view that when invoices clearly mentioned appellant factory Bhopal as the

consignee that there is no justification for denial of modvat credit in relation to those goods.

9. Coming to the bill of entry relating to the payment of additional customs duty, the department has denied modvat credit on the ground that bills of entry are in the name of the appellant's Head office while the goods have been received in the factory. We are of the view that this objection also is not valid in view of judgement of the Tribunal in the case of **Gujarat Heavy Chemicals Ltd. vs. CCE, Rajkot** -2005 (192) ELT 658 wherein it was held that when bills of entry show the address of the head office while the goods sent to the factory of the assessee cenvat credit would be admissible. We also find that in this case there is no dispute that the goods covered under these bills of entry were received in the factory and used for the manufacture of the finished product. Therefore, in our view there is no justification for denial of modvat credit on the basis of these bills of entry.

10. In view of the above discussion, we hold that the impugned order is not sustainable. The same is set aside. Cenvat credit demand, interest and penalty is set aside. The appeal is allowed.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

Pant