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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/899/2005-EX[DB]

Dated: **03/10/2012**

Assistant Registrar
C.E.S.T.A.T. New Delhi
To,
C.C.E. LUDHIANA
Central Excise House, 'F' Block, rishi
Nagar, Ludhiana 141001 (Punjab)

C.C.E. LUDHIANA (Appellant)

VS

BATHINDA CHEMICAL LTD. (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **A/1181/2012-EX|DB|** dated **20/09/2012** passed by the Tribunal under section **35-C(1) of the Central Excise and Salt Act, 1944.**

Assistant Registrar
EXCISE Appeal Branch

Copy To,
1. Respondent
BATHINDA CHEMICAL LTD.
Hazi Rattan Road, Bathinda (Punjab)

2. Advocate(s) / Consultant(s): SH. HRISHIKESH, ADV, A-5, BASEMENT, LAJPATNAGAR-III, N. DELHI-24

3. C.D.R

4. Bar Association, CESTAT, New Delhi

5. Director Publications, Customs, Excise. I.P. Estate, New Delhi

6. M/s Centax Publications 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. Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Ameer Pet, Hyderabad – 500038

13. Office Copy

14. Gaurd File

Assistant Registrar
EXCISE Appeal Branch

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. III

DATE OF HEARING : 20/09/2012.
DATE OF DECISION : 20/09/2012.

Excise Appeal No. 899 of 2005

[Arising out of the Order-in-Appeal No. 637/CE/APPL/LDH/2004 dated 24/11/2004 passed by The Commissioner (Appeals), Central Excise, Ludhiana.]

For Approval and signature :
Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Shri 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?	:	No
2.	Whether it would 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 Department Authorities?	:	Yes

CCE, Ludhiana — Appellant

Versus

M/s Bathinda Chemical Ltd. — Respondent

Appearance

Shri M.S. Negi, Authorized Representative (DR) – for the appellant.

Shri Hrishikesh, Advocate – for the Respondent.

CORAM : **Hon'ble Ms. Archana Wadhwa, Member (Judicial)**
Hon'ble Shri Rakesh Kumar, Member (Technical)

FINAL Order No. A/1181/2012-EX (CBR) Dated : ____________

Per. Archana Wadhwa :-

Being aggrieved with the impugned order of Commissioner (Appeals), Revenue has filed the present appeal. After hearing Shri M.S. Negi, DR for the Revenue and Shri Hrishikesh, Advocate for the respondent, we find that the respondents are engaged in the manufacture of vegetable products and were availing the benefit of small scale exemption notification. They were also manufacturing polyjars which were being used by them captively, for packing their final product. Instead of availing the captive exemption Notification No. 10/1996-CE, the respondent's availed the benefit of credit on the raw material used for the manufactured polyjars and paid duty on the polyjars, took credit of the said duty and utilized it for further payment of duty on the final product.

2. The Revenue case is assessee could not have paid any duty on the polyjars, which were manufactured by them and consumed captively. Commissioner (Appeals) has observed that the Notification No. 9/2002-CE provided an option to the assessee to avail Cenvat credit and pay duty at the concessional rate in respect of various goods manufactured by them. In as much as polyjars are being manufactured by them, after availing benefit of Modvat credit, the assessee is within his rights to opt for Notification No. 9/2002-CE.

3. After going through the impugned order of Commissioner (Appeals), we do not find nay infirmity in the same. Admittedly, in terms of Notification No. 9/2002-CE, polyjars is one of the specified items in the Annexure to the said notification. As such, the appellant was within his rights to opt for any one of the two notifications. The benefit of captive consumption Notification No. 10/2006-CE cannot be thrusted upon the assessee. The period involved in the present case is around 2002 and there are number of judgments laying down that when there is an exemption Notification, the assessee cannot be compelled to avail the same and he has an option to avail or to pay duty on the goods manufactured by them.

4. In view of the foregoing, we find no merits in the Revenue's case, the same is accordingly rejected.

(Dictated and pronounced in open court)

(Archana Wadhwa)
Member (Judicial)

(Rakesh Kumar)
Member (Technical)

PK