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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/2390/2005-EX[DB]

Dated: **05/10/2012**

Assistant Registrar
C.E.S.T.A.T. New Delhi
To,
VINEETA POLYMERS PVT. LTD.
55, GOPAL NAGAR, NEAR KRISHNA
NAGAR, LUCKNOW

VINEETA POLYMERS PVT. LTD. (Appellant)

VS

C.C.E. LUCKNOW (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **A/1199/2012-EX[DB]** dated **25/09/2012** 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
C.C.E. LUCKNOW
7-A, Ashok Marg, Lucknow.

2. Advocate(s) / Consultant(s):
SH. AMIT JAIN, ADV.,
B-6/10, SAFDARJUNG ENCLAVE,
NEW DELHI,
DELHI
110029

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 : 25/09/2012.
DATE OF DECISION : 25/09/2012.

Excise Appeal No. 2390 of 2005

[Arising out of the Order-in-Original No. 06/Commissioner/LKO/ 2005 dated 28/03/2005 passed by The Commissioner, Central Excise, Lucknow.]

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

M/s Vineeta Polymers Pvt. Ltd. Appellant

Versus

CCE, Lucknow Respondent

Appearance

Shri Amit Jain, Advocate – for the appellant.

Ms. Ranjana Jha, Authorized Representative (Jt. CDR) – for the Respondent.

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

FINAL Order No. A/1199/2012-Ex(PB) Dated : ______________

Per. Archana Wadhwa :-

The short issue involved in the present appeal is as to whether the duty paid on the battery cells, purchased by the appellant from M/s Eveready and used as accessory in the torches manufactured by them is available as credit to them or not. Learned advocate has drawn our attention to the Tribunal decision in the case of **Eveready Industries India Ltd. vs. CCE, Lucknow** vide final order No. 338/2005 – NB (A) dated 07/03/2005 holding that Modvat credit of duty paid on the batteries as also on sleeves and packing material is available, as they are cleared alongwith torches. He also submits that all the subsequent demands raised against the same applicant on the same ground stands dropped by the Additional Commissioner. He draws our attention to one such order dated 30th November 2009 as also another order dated 31st March 2010. He further submits that as per his knowledge, the said decisions have not been appealed against by the Revenue and stand accepted by the Department.

2. Countering the argument, learned AR submits that the fact of accepting the said order is not clear and there is no evidence to that effect. In any case, she submits that the appellant has not included the full value of the batteries in the assessable value of the torch and as such earlier decisions are differentiable.

3. Countering the arguments, learned advocate clarifies that the value on which they purchase the batteries stand admittedly included in the assessable value of the torch. Revenue's contention to include the MRP of the battery instead of the purchase point in the assessable value of the torch cannot be accepted and the orders of the Additional Commissioner have dealt with the same point.

4. We find that identical issues between the same parties stand decided by the Additional Commissioner. As such, we deem it fit to set aside the matter and remand the matter to proper officer for re-adjudication in the light of the earlier orders passed by Additional Commissioner, as also the Tribunal's order in the case of Eveready Industries India Ltd. Appeal is thus allowed by way of remand.

(Dictated and pronounced in open court)

(Archana Wadhwa)
Member (Judicial)

(Rakesh Kumar)
Member (Technical)

PK