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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/1812/2011 - EX[DB]
E/S/2391/2011-EX

Date **07/05/2012**

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

To :
BCH ELECTRIC LIMITED,
20/04, MATHURA ROAD, FARIDABAD, HARYANA.

BCH ELECTRIC LIMITED, Appellant
Vs
C.C.E. DELHI IV Respondent

STAY ORDER NO. 742/2012-EX

I am directed to transmit herewith a certified copy of **Final order No. A/518 2012 EX[DB]** dated 02-5-12 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. DELHI IV
NEW CGO COMPLEX, NH-IV,
FARIDABAD, HARYANA 121001.

2. Adv. / Consult
MR.V. LAXMIKUMARAN
B-6/10, SAFDARJUNG ENCLAVE, NEW 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 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-I

Date of hearing/decision: 2.5.2012

Stay Application No.2391 of 2011 and
Central Excise Appeal No.1812 of 2011

Arising out of the order in original No. 01/DM/ADKM/2011-12 dated 18.4.2011 passed by Commissioner of Customs & Central Excise, Delhi IV.

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

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 26 of the CESTAT (Procedure) Rules, 1982?	
2	Whether it should be released under Rule 26 of 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?	

BCH Electric Ltd. .. Appellant

Vs.

C.C.E., Delhi IV .. Respondent

Present Shri A.R.Madhav Rao, Advocate for the appellants

Present Shri R.K. Verma, A.R. for Revenue

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

STAY order No. 742/2012 - Ex (BR)
FINAL Order No. A/518/2012 - Ex (BR)

Per Justice Ajit Bharihoke:

Appellant M/s BCH Electric Ltd. Mathura Road, Faridabad is engaged in the manufacture of motor starters, connectors, converters and MCC panel classifiable under Chapter 85 and 90 of the

First Schedule of the Central Excise Tariff Act, 1985.The appellant is also availing the benefit of Cenvat Credit in respect of the inputs used for manufacture for final product. The period of dispute is from 2005-06, 2006-07, 2007-08 and 2008-09. During the course of audit of cost accounting of assessee, it was noticed that the appellant assesee in the stock record pertaining to the raw materials and components had shown certain quantity of inputs, regarding cenvat credit was availed , as non-moving stock and debited the quantity of non-moving stocks from the total inventory balance. The department took the view that since those non-moving inputs have been declared as written off goods in the account, the appellant ought to have reversed the cenvat credit availed in respect of non-moving stock. Accordingly, show cause notice was issued to the appellant raising demand for the period from 2005 to 2009. The appellant contested the show cause notice and he explained before the adjudicating authority that the aforesaid non-moving stock was not written off. The adjudicating authority was not convinced with the submissions of the appellant assesee. Therefore, he confirmed the duty demand to the extent of Rs.74,89,990/- with interest and also imposed penalty of the equal amount on the assesee.

2. Feeling aggrieved of the order in original passed by the Commissioner (Adjudication), the appellant has preferred this appeal along with stay application under Section 35F of the Central Excise Act seeking waiver of the condition of pre-deposit of the duty demand, interest and penalty.

3. Although the matter was listed for argument on stay application, after hearing argument for some time, we are of the view that the appeal itself can be disposed of at this stage. Accordingly, with the consent of the parties, we dispense with the condition of pre-deposit and proceed to hear the appeal.

4. It is not disputed that cenvat credit was availed by the appellant on the inputs in question in accordance with the Rules. Thus, the question for determination in this appeal is whether non-moving of stock of inputs which according to the assesse were declared as aged stock could be termed as written off or unusable as inputs to attract Rule 3(5B) of the Cenvat Credit Rules, 2004.

5. Shri A.R.Madhav Rao, learned Advocate for the appellant has submitted that the adjudicating authority has passed the order confirming the demand without application of mind to the facts and circumstances of the case. It is contended that during adjudication proceeding, it was submitted by the assessee that two years old stock of inputs, against which cenvat credit was availed, was declared in the stock inventory as non-moving stock only for the purpose of administrative convenience that the said non-moving stock was not rendered unusable and it was actually used in the manufacture of finished goods even after having been categorized as non-moving. Non-moving stock was fluctuating from time to time, sometimes it decreased and sometimes it increased. Learned Counsel submitted that even verification reports of Chartered Accountant dated 21.2.2011 and Chartered Engineer dated 12.3.2011 confirming that the stock categorized as non-moving stock was continuously used for manufacture of finished product but the adjudicating officer did not give any reason for not accepting those reports. It is also contended that the adjudicating officer has brushed aside the plea of limitation taken by the appellant without giving any reason. Thus, according to the learned Counsel for the appellant that the impugned order in original is a non-speaking order. As such, he has urged for remand of the case back for fresh adjudication.

6. Shri R.K. Verma, learned Authorised Representative for respondent Revenue has fairly conceded that the impugned order does

not effectively answer the pleas taken by the appellant in the adjudication proceeding. It is also conceded that the adjudicating authority before confirming the demand has not even tried to verify the reports of Chartered Accountant and Chartered Engineer certifying that the non-moving stock of inputs was not written off but used for the production of finished goods. As such, the learned A.R. has fairly conceded that the department has no objection if the impugned order is set aside and the matter is remanded back to the adjudicating authority for deciding fresh after giving due hearing to the appellant on all aspects of the matter.

7. We have considered the submissions made by the parties and perused the records. On consideration of records, we find that the impugned order in original is not sustainable in law because it is a non-speaking order passed without undertaking exercise to verify the correctness of the defence put up by the appellant /appellant as also the reports of Chartered Accountant and Chartered Engineer submitted by the appellant in support of his defence. Accordingly, the impugned order in original is set aside and the matter is remanded back to the adjudicating authority to decide afresh on all aspects of the matter after giving due opportunity of being heard to the parties. We expect that the adjudicating authority to decide the matter within six months from today.

8. The appeal as also stay petition are disposed of accordingly.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Technical Member

scd/