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

CROSS Application No. : E/CROSS/9/2011
Appeal No. : E/2492/2005-EX[DB]

Dated: **09/08/2012**

Assistant Registrar
C.E.S.T.A.T. New Delhi
To,
C.C.E. JAIPUR I
N.C.R.Building, Statue Circle, "C"
Scheme, jaipur 302005.

(Appellant)
C.C.E. JAIPUR I

VS

(Respondent)
HINDUSTAN PULVERSING MILLS

I am directed to transmit herewith a certified copy of Final Order No. **A/905/2012-EX[DB]** dated **01/08/2012** 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
HINDUSTAN PULVERSING MILLS

2. **Advocate(s) / Consultant(s):** SH. KRISHAN KANT ADV,
704, NILGIRI APARTMENTS,
9, BARAKHAMBA ROAD, N. DELHI-1

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. Office Copy

13. Gaurd File

Assistant Registrar
EXCISE Appeal Branch

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
Court No.I

Date of hearing/decision: 1.8.2012

E/Appeal No.2492/2005 with
Cross Objection No.E/09/2012

(Arising out of order in appeal No. 116-117(MPM)CE/JPR-1/05 dated 2.5.2005 passed by the Commissioner (Appeals), Central Excise, Jaipur)

For Approval and signature:

Hon'ble Mrs. Archana Wadhwa, Member Judicial
Hon'ble Mr.Mathew John, 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 would 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 Department Authorities?

CCE, Jaipur ... Appellant
Vs

M/s Hindustan Pulverizing Mills Respondent

Appearance:

Present Shri I. Beg, DR for appellant
Present Shri Krishan Kant, Advocate for Respondent

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

FINAL order No. A/905/2012-EX(BH)

Per Justice Ajit Bharihoke:

This appeal has been filed against the order in appeal No. 116-117 (MPM)CE/JPR-12005 dated 2nd May, 2005 whereby the

Commissioner (Appeals) has set aside the order in original passed by the Additional Commissioner confirming duty demand of Rs. 22,38,028/- with interest besides penalty on the premise that the assesse-respondent has wrongly re-credited the aforesaid amount to his cenvat credit account without applying for refund of the aforesaid amount.

2. Shri I. Baig, learned A.R. for Revenue pleaded that the impugned order of Commissioner (Appeals) is not sustainable in law for the reason that he has ignored the fact that the respondent during the period in question has cleared his goods on payment of excise duty as per provisional assessment which was never finalized. The Commissioner (Appeals) also ignored the fact that no refund claim was filed by the respondent nor it was settled by the Department.

3. Shri Krishan Kant, Advocate appearing for the respondent has fairly conceded that it is settled position in law that unless the refund claim of the assesse is decided, the assesse cannot *suo moto* take credit of excise duty paid in excess under the provisional assessment. Learned Counsel also concedes that the respondent has no objection if the impugned order is set aside and the matter is remitted back to the adjudicating authority to adjudicate the show cause notice afresh after considering the plea of the respondent regarding final assessment and also the refund of excise duty admissible to them under the final assessment.

4. In view of the settled legal position as also the concession given at the bar by the learned Counsel for the respondent, the impugned order is set aside and the matter is remanded back to the adjudicating

authority who shall adjudicate the show cause notice *de novo* taking into consideration the plea of the respondent regarding final assessment as also the refund of excess excise duty paid under the provisional assessment. The Adjudicating Commissioner concerned is requested to adjudicate the matter as early as possible.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

MPS*