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

Appeal No. : E/3066/2009-EX[DB] Dated: **05/07/2012**

Assistant Registrar
C.E.S.T.A.T. New Delhi
To,
BALKRISHNA INDUSTRIES LTD.
SP-923, RIICO INDUSTRIAL AREA,
BHIWADI,DISTT. ALWAR
(RAJASTHAN)

BALKRISHNA INDUSTRIES LTD. (Appellant)

VS

C.C.E. JAIPUR I (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **A/743/2012-EX[DB]** dated **26/06/2012** 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. JAIPUR I
N.C.R.Building, Statue Circle, "C"
Scheme, jaipur 302005.

2. Advocate(s) / Consultant(s):
PDS Legal,Advocate
GOLF VIEW CORPORATE TOWER-B,
SECTOR-42, SECTOR ROAD,
GURGAON-122002

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

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing/Decision :26.06.2012

Hon'ble Mr. Justice Ajit Bharihoke, President
Hon'ble Mr. 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.3066 of 2009-Excise

(Arising out of Order-in-Original No.37/2009(C.E.) Commissioner dated 30.09.2009 of the Commissioner of Central Excise, Jaipur-I).

M/s. Balkrishna Industries ...Appellant

Vs.

CCE, Jaipur-I ...Respondent

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

Appearance: Shri Prakash Shah, Advocate for the appellants.
Shri S.R. Meena, AR for the respondent.

FINAL Order No. A/743/2012-Ex (BR)

Per Rakesh Kumar:

The appellant manufactures Rubber Tyres chargeable to central excise duty. The inputs used by the appellant in the manufacture of Rubber Tyres is Special Boiling Point Spirit (SBPS) received from Bharat Petroleum Corporation Ltd. and Solvent 1425 received from Hindustan Petroleum. The department was of the view that the Special Boiling Spirit and Solvent 1425 are not covered by the definition of 'input' as given in Rule 2 (g) of the Cenvat Credit Rules, 2002 / 2(K) of the Cenvat Credit Rules, 2004. It is on this basis that the Commissioner vide order-in-original dated 30.09.2009 confirmed the cenvat credit demand of Rs.1,34,62,517/- along with interest for the period from 2003-2004 to Jan. 2008 and besides this, he also imposed penalty of equal amount on the appellant under Rule 13 of the Cenvat Credit Rules, 2002/Rule 15 of the Cenvat Credit Rules, 2004. Against this order of the Commissioner (Appeals), this appeal has been filed.

2. Heard both the sides.

3. Shri Prakash Shah, Advocate, ld. Counsel for the appellant, pleaded that the only basis for denial of cenvat credit in respect of these inputs is that according to the department, these inputs are motor spirits and motor spirits are excluded from the definition of input, that this view of the department is not correct, as what is excluded from the definition of 'input' is "motor spirit commonly known as petrol" and SBPS and other solvents being used by the appellant are not "motor spirits commonly known" as petrol, that in this regard he relies upon the judgement of the Tribunal in the case of **CCE, Meerut-II Vs. Tuftween Petrochemicals Vs. CCE, Meerut reported in 2005 (185) ELT 203 (Tribunal-Delhi).**, wherein the Tribunal held that SBPS is not the same as the "Motor Spirit commonly known as petrol" and would be eligible for cenvat credit as inputs, that though this judgement of the Tribunal was cited before the Commissioner the same has not

been followed by him on the ground that the appeal against the same has been filed by the department which is pending before the Hon'ble Allahabad High Court, that since the Tribunal's judgement has not been stayed or set aside, the same is binding on the Department and that in view of the above, the impugned order is not correct.

4. Shri S. R. Meena, ld. Departmental Representative, defended the impugned order reiterating the findings of the Commissioner and emphasized that the inputs, in question, are motor spirits which is comparable with petrol as confirmed by the Chemical Examiner's report and hence, the same are excluded from the definition of 'inputs'. He also pleaded that the judgement of the Tribunal in the case of **Tuftween Petrochemcials (supra)** is under challenge by the department before the Allahabad High Court and, hence, the same is not a binding preceden

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

6. It is not disputed that the Special Boiling Point Spirits (SBPS)/ Solvent 1425 are used by the appellant as raw materials for manufacture of the rubber solution, which is used in re-trading of tyres. It is also not the case of the department that the appellant/assessee use SBPS/Solvent 1425 as a fuel like petrol.

7. We also find that the invoices on the basis of which the cenvat credit has been taken mention the product as SPBS not as petrol. It is also seen that the exemption notification no.4/06-CE dated 1.3.2006 (S.No.17) prescribes an effective rate of duty in respect of "motor spirit commonly known as petrol", which is different from the rate of duty for other motor spirits. Similarly, additional excise duty chargeable under Section 111 of the Finance Act, 1998 and special additional excise duty under Section 147 of the Finance Act, 2002 is chargeable only on "Motor Spirit commonly known as petrol" and not on other motor

spirits. Thus, the legislature itself makes distinction between SBPS and "Motor Spirit commonly known as petrol" and hence, the SPBS cannot be equated with "Motor Spirit commonly known as petrol". Moreover, from heading 271011 for "Light Petroleum oils and preparation " it is seen that there are several varieties of motor spirits covered under different sub-headings – Special Boiling Point Spirits of different boiling point range are covered under SH 2710 1111, 2710 1112 and 2710 1113, while other motor spirits are covered under SH 2710 1119 and "petrol" is classifiable under SH 2710 1119. What is excluded form the definition of 'input' is "Motor Spirits commonly known as petrol" not all the motor spirits. We find that this issue stands decided by the Tribunal in favour of the appellant by the Tribunal's judgement in the case of **CCE Vs. Tuftween Petrochemicals (supra)** and since it has not been stayed or set aside by any higher appellate authority, in terms of the Apex Court's judgement in case of **Union of India Vs. Kamlakshi Finance Corporation Ltd. reported in 1991 (55)ELT 433 (SC)** the same is binding on the adjudicating authority.

8. In view of the above discussion, we are of the view that the impugned order is not sustainable and the same is set aside. The appeal is allowed.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

Ckp.