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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/1713,1716&1717/2008,2632/2007&927/2008-EX[DB]
E/STAY/1697,1700&1701/2008-EX

Dated: **11/07/2012**

Assistant Registrar
C.E.S.T.A.T. New Delhi
To,
C.C.E. JAMMU
OB-32, RAIL Head Complex, Jammu - 180012.

C.C.E. JAMMU (Appellant)

VS

CONTINENTAL TRANSFORMERS (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **A/796-800/2012-EX[DB]** , Stay Order No. **SO/1058-1060/2012** dated **03/07/2012** 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
CONTINENTAL TRANSFORMERS
VILLAGE-KAINTHPUR, SALMERI,
JAMMU.

2. Advocate(s) / Consultant(s): SH. AS GILL, ADV.,
3355, 21-D, CHANDIGARH

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

P.T.O.-2,

14. M/S. HI-TECH TRANSFORMERS,
NATIONAL HIGHWAY,
KARTHOLI, BARI BRAHMANA, JAMMU

15. M/S. J. K. TRANSFORMERS & SWITCHGEARS,
GANGYAL, JAMMU

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing/decision: 3.7.2012

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?	

Stay Application No.1697 of 2008 and Central Excise Appeal No.1713 of 2008

Arising out of the order in appeal No.188/CE/Appl/Jal/08 dated 9.4.2008 passed by Commissioner of Central Excise (Appeals), Jalandhar, Chandigarh.

C.C.E., J & K, Jammu ... Appellant

Vs.

M/s Continental Transformers .. Respondents

Stay Application No.1700 & 1701 of 2008 and Central Excise Appeal No.1716 & 1717 of 2008

Arising out of the order in appeal No.203-204/CE/Appl/Jal/08 dated 22.4.2008 passed by Commissioner of Central Excise (Appeals), Jalandhar, Chandigarh.

C.C.E., J & K, Jammu ... Appellant

Vs.

M/s Continental Transformers .. Respondents

Central Excise Appeal No.2632 of 2007

Arising out of the order in appeal No. 171/CE/Appl/Jal/2007 dated 27.6.2007 passed by Commissioner of Central Excise (Appeals) Jalandhar, Chandigarh.

C.C.E., J & K, Jammu ... Appellant

Vs.

M/s Hi-Tech Transformers .. Respondents

Central Excise Appeal No.927 of 2008

Arising out of the order in appeal No.05/CE/Appl/Jal/2007 dated 16.1.2008 passed by Commissioner of Central Excise (Appeals), Jalandhar, Chandigarh.

C.C.E., J & K, Jammu ... Appellant

Vs.

M/s J.K. Transformer & Switchgears ... Respondent

Present for the appellant : Shri R.K.Verma, A.R.
Present for the respondent : Dr. A.S.Gill, Advocate
STAY order No. 1058-1060/2012-Ex(BR)
FINAL Order No. A/796-800/2012-Ex(BR)

Per Justice Ajit Bharihoke (Oral):

These appeals are taken up together as common question of law and facts are involved. .

2. Revenue in these appeals have challenged the respective impugned orders of Commissioner (Appeals) No. 188/CE /Appl /Jal/08 dated 9.4.2008, 203-204/CE/Appl/Jal/08 dated22.4.2008, 171/ CE/Appl/Jal/2007 dated 27.6.2007 and 05/CE/Appl/Jal/2007 dated 16.1.2008 whereby the Commissioner (Appeals) had allowed the refund of duty paid by the respective respondents on HV/LV coils used captively for repairing transformer.

3. The plea of the Department is that fabrication of HV/LV coils do not bring about marketable goods as such, the HV/LV coils admittedly used captively by the respondents for repair of transformers cannot be termed as excisable goods. As such, even if the respondent has paid excise duty while clearing those goods for captive consumption, the respondents would not be entitled for refund under Notification No.56/02-CE dated 14.11.2002. In support of this contention, Shri R.K. Verma, learned A.R. for the appellant Revenue has relied upon the judgment of the Tribunal in the matter of PSEB vs. C.C.E., Chandigarh - 1995 (76) ELT 313 (Tri). Learned A. R. submits that the

aforesaid order has attained finality for the reason that the appeals preferred by the Department against that orders have been finally dismissed vide judgment of the Supreme Court in the matter of Collector vs. PSEB reported in 1996 (83) ELT A -106 (SC).

4. Shri A.S. Gill, learned Advocate for the respondents on the contrary has argued in support of the impugned orders allowing refund. He submits that after the judgment of the Tribunal in the matter of PSEB vs. C.C.E. (supra), the same issue came up for consideration before the Tribunal in the matter of Vijay Transformers and Anr. Vs. C.C.E., Chennai wherein the Tribunal vide Final Order No.1017 & 1018/2006 dated 21.9.2006 distinguished the judgment of the Tribunal in the matter of PSEB vs. C.C.E., Chandigarh and held that fabrication of coils which are used for repair of transformers amounts to manufacture to invite the incident of excise duty. Thus, it is contended that the respondents have rightly paid the excise duty on HV/LV coils and are entitled to refund under the Notification. Learned Counsel further submits that initially the stand of the respondents was that they were not liable to pay excise duty on HV/LV coils captively cleared for manufacture of transformers. However, the Department issued show cause notices to the respondents M/s Continental Transformers raising demand for excise duty and ultimately the original adjudication order No.04/CE/ADC/JK/06 dated 31.5.06, the jurisdictional Assistant Commissioner of Central Excise confirmed the duty demand of Rs.32,58,775/- along with interest and equal amount of penalty. The appeal preferred by the said respondent against the aforesaid order was dismissed on merit, however, relief was given on the point of limitation. Learned Counsel submits that because of coercion and the pressure of the Department, the respondents cleared

HV/LV coils on payment of excise duty, therefore, now the respondents cannot raise the plea that aforesaid goods are not excisable not being marketable commodity.

5. We have considered the rival contentions and perused the record as well as the relevant judgments relied upon by the parties. On perusal of the judgment of the Tribunal in the matter of PSEB vs. C.C.E., Chandigarh (supra), we find that the controversy whether or not HV/LV coils fabricated by the assessee are subject to levy of excise duty has been set at rest by the Tribunal by holding that fabrication of HV/LV coils does not bring about marketable goods, as such, those coils are not subject to levy of excise duty. Aforesaid order of the Tribunal has attained finality for the reason that the Supreme Court in the matter of C.C.E., Chandigarh vs. PSEB (supra) has dismissed the appeal preferred against the order of CESTAT by the Department.

6. On reading of the judgment in the matter of Vijay Transformers and Anr., relied upon by the Department, we nowhere find as to how and in what manner the Co-ordinate Bench of the Tribunal has distinguished the view taken by the CESTAT in the matter of PSEB vs. C.C.E. which was confirmed by the Supreme Court in Appeal. Thus in our considered view the issue whether or not LV/HV coils are subject to levy of excise duty is covered by the judgment in the matter of PSEB. As such, we hold that the aforesaid coils are not subject to excise duty.

7. Now the question arises since the respondent has admittedly cleared HV/LV coils on payment of excise duty, would he be entitled to benefit of exemption Notification No.56/2002-CE? Our answer to this question is in the negative. Notification No.56/02-CE provides for refund of the payment of excise duty and additional excise duty paid by the assessee from his PLA account while clearing the excisable goods. In the instant case we have already concluded that HV/LV coils fabricated by the respondents are not subject to levy of excise duty. That being the case when excise duty was not leviable on the goods,

the respondent cannot take the benefit of Notification No.56/02-CE on the plea that he has cleared non-excisable goods on payment of excise duty. Otherwise also we cannot ignore the fact that excise duty paid by the assessee gets passed on to the consumer and the assessee does not suffer financial loss as he gets excise duty back from the buyer.

8. Coming to the plea of the respondent that he has been forced/ coercioned by the Department to clear the goods on payment of duty we may note that this is a case in which no harm or loss is caused to the respondent for the reason that excise duty on the final product obviously have been passed on to the ultimate consumer i.e. Electricity Board who got the transformer repaired. No doubt, the respondents have paid excise duty while clearing HV/LV coils but the facts remain that the aforesaid excise duty has been recovered by him from the consumer concerned as such, this is a case of no loss to the respondent, we therefore, find no merit in this plea of the respondent.

9. In view of the discussions above, we find no nmerits in the appeals filed by the Department and in our view, the impugned order of Commissioner (Appeals) allowing refund to the respondent are not sustainable . The appeals are therefore, accepted and the impugned orders are set aside.

10. Appeals as well as stay applications are disposed of accordingly.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Technical Member

scd/