**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. IV**

**Excise Appeal No. E/59703/2013-E[SM]**
[Arising out of Order-In-Appeal No. 99-E/APPL/GZB/08 dated 28.06.2013 passed by CCE (Appeals) Ghaziabad]

**For approval and signature:**
Hon'ble Mr. S.K. Mohanty, Member (Judicial)

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| 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? | |

M/s. Albert David Ltd. ...Appellant

Vs.

C.C.E. & S.T. Ghaziabad …Respondent

**Appearance:**
Authorized Representative for the Appellant
Mr. Devinder Singh, DR for the Respondent

**CORAM:**
Hon'ble Mr. S.K. Mohanty, Member (Judicial)

Date of Hearing/ Decision. 29.07.2015

**Final Order No. 54318 /2015**

**Per S K Mohanty**:

The appellant is engaged in the manufacture of I.V. Fluids, which is exempted from payment of Central Excise duty. One of the raw materials used in the process is LDPE granules, which is used for manufacture of plastic bottles, in which IV Fluids is packed. The appellant avails cenvat credit in respect of plastic granules used in the manufacture of waste/scrap of plastic bottles, which are not usable for packing the I.V. Fluids. On removal of such waste material, the appellant discharges the duty liability. Taking of cenvat credit on the HDPE granules contained in such waste product was disputed by the Central Excise Department. In the process of adjudication, demand of Rs.1,60,624/- was confirmed alongwith interest and equal amount of penalty was imposed on the appellant. On appeal, the ld. Commissioner (Appeals) vide the impugned order dated 28.06.2013 has upheld the adjudged demand. Hence, this present appeal is before the Tribunal.

2. Heard the Ld. Counsel for both the sides.

3. The period of dispute in this case is February' 2011. I find that the issue arising out of the present dispute is no more *res integra* in view of the Final Order No. 51539/2015 dated 23.04.2015 passed by this Tribunal in the case of the appellant itself in appeal No. E/2287/2011-EX (DB). The relevant paragraph in the said order is extracted herein below:-

> "3. Both sides agree that the issue involved in this case stands decided by the judgment of Hon'ble Allahabad High Court in the appellants own case reported in 2013 TIOL 621 – All. Cx, and this judgment of Hon'ble Allahabad High Court has been affirmed by the Hon'ble Apex Court reported in 2014 – TIOL – 36 – SC – CX. Both sides also agree that relying upon Hon'ble Allahabad High Court judgment the Tribunal in the appellant's own case for the previous period has vide final order No.54949/2014 dated 18.12.2014 has set aside the cenvat credit demand in respect of the LDPE granules which had gone waste in the course of manufacture of plastic bottles for packing of I.V. Fluids by the appellant. In view of this, the impugned order is set aside. The appeal is allowed."

4. In view of the above settled position of law, I do not find any merits in the impugned order. Accordingly, the same is set aside and the appeal is allowed in favour of the appellant.

(Dictated and pronounced in open court)

(S. K. Mohanty)
Member(Judicial)

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