IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. III

DATE OF HEARING : 17/02/2016.
DATE OF DECISION : 17/02/2016.

Excise Appeal No. 1107 of 2007

[Arising out of the Order-in-Appeal No. 11/APPL/IND/2007 dated 29/01/2007 passed by Commissioner (Appeals), Central Excise, Indore.]

For Approval and signature :
Hon'ble Shri S.K. Mohanty, Member (Judicial)
Hon'ble Shri B. Ravichandran, 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 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?	:

M/s Kriti Industries (India) Ltd. Appellant

Versus

CCE, Indore Respondent

Appearance

Shri A. Upadhyay, Advocate – for the appellant.

Ms. Neha Garg, Authorized Representative (DR) – for the Respondent.

CORAM: **Hon'ble Shri S.K. Mohanty, Member (Judicial)**
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No. 56471/2016 Dated 17/02/2016

Per. S.K. Mohanty :-

The brief facts of the case are that the appellant is engaged in manufacturing of HDPE Pipes falling under Chapter 39 of the Central Excise Tariff Act, 1985. The appellant also avails Cenvat credit of Central Excise duty paid on inputs and capital goods and service tax on the input services. During the disputed period, the appellant had availed the exemption from payment of Central Excise duty in terms of Notification No. 47/2002 dated 06/09/2002 in respect of clearance of goods to the Government undertakings. Since, the appellant did not maintain separate account of common inputs used in the manufacture of both dutiable and exempted goods, it had debited an amount of Rs. 3,17,65,805.97/- during the period January to March 2005. The exempted clearances of HDPE pipes as per the provisions of Rule 6 (3) (b) of the Cenvat Credit Rules, 2004. Subsequently, the appellant had filed the refund application on 01/02/2006, claiming refund of the said amount wrongly debited by it. The refund claim was filed by the appellant by relying on the decision of this Tribunal in the case of **Andhra Pradesh Paper Mills Ltd. vs. CCE, Visakhapatnam** reported in **2005 (185) E.L.T. 371 (Tri. – Bang.)**, according to which there was no requirement to debit an amount from the Cenvat account. The refund application was rejected by the Original Authority. On appeal, the learned Commissioner (Appeals) vide the impugned order dated 29/01/2007 has upheld the adjudication order. While rejected the appeal filed by the appellant herein, the learned Commissioner

(Appeals) has recorded the following findings in the impugned order :-

> "5. ….. In the present case the appellant have taken credit on common input namely HDPE granules which was used in the manufacture of both dutiable and exempted products. Hence they are bound to pay the 10% amount as per Rule 6 (3) (b) of the Cenvat Credit Rules, 2004 which they did at the relevant time and hence they cannot seek refund of such amount paid correctly and as per law. Accordingly, in view of the Apex Court judgments in the case of *Amrit Paper and Ichalkaranji Machine Centre* (supra) as well as the Tribunal decision in the case of Rallies India Ltd., mentioned above I hold that the refunds claimed by the appellants are not eligible to them and therefore the rejection of the same vide the impugned order has to be upheld (though the Adjudicating Authority did it on different grounds)".

2. Heard both sides and perused the appeal records. We find that the learned Commissioner (Appeals) has upheld the rejection of refund claim in the adjudication order by placing reliance on the judgment of Hon'ble Supreme Court in the case of **Amrit Paper vs. CCE, Ludhiana** reported in **2006 (200) E.L.T. 365 (S.C.)** and also the decision of Larger Bench of the Tribunal in the case of **Rallies India Ltd. vs. CCE, Salem** reported in **2007 (78) R.L.T. 117 (CESTAT – LB)**. Further, we also find that the decision of Tribunal in the case of **Andhra Pradesh Paper Mills Ltd.** (supra) has already been set aside by the Hon'ble Supreme Court reported in **2015 (319) E.L.T. 554 (S.C.)**. Appeal against the said decision of the Tribunal was set aside by the Hon'ble

Supreme Court by placing reliance on the judgment in the case of **Amrit Paper** (supra). Since, the appellant has filed the refund application based on the decision of the Tribunal in the case of **Andhra Pradesh Paper Mills Ltd.** (supra), which is no more consider to be a good law, we are of the view that rejection of refund claim by the authorities below will be sustained in the eyes of law.

3. Therefore, we dismiss the appeal filed by the appellant.

(Order dictated and pronounced in the open court.)

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

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