

REGISTERED / AD
CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
OLD RED BUILDING, 38, M.C. Marg, CIVIL LINES, ALLAHABAD

Dated: 28/11/2015

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/ 70067/2015- dated 28/10/2015

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the Central Excise and Salt Act, 1944.

S/S *[Signature]*
Asstt. Registrar

Application	Appeal	Name and Address of Appellant
		E/1801/2006SM RATTAN VANASPATHI LTD C/O MR. P.B.JAIN, HOUSE NO 24, NEELAM BATA ROAD, NIT FARIDABAD, HARYANA-121001

Name and Address of Respondent	CCE MEERUT II
	OPP SHAHID SMARK, DELHI- ROAD, MEERUT

Other Appellants and Respondents as per Annexure

Copy To

3 Advocate(s) / Consultant(s): SH BIPIN GARG, ADV
B-1/1289A, VASANT KUNJ
NEW DELHI.-70

- 4 Bar Association, CESTAT, Delhi
- 5 Director Publications, Customs, Excise, I.P. Estate, Delhi
- 6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishan Pitamah Marg, 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 Doc Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15
- 10 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
- 11 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070
- 12 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad - 38
- 13 The ICAI society, 52, Nagarjuna Hill, Punjagutta Hyderabad.-500082
- 14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar
Regional Bench, Allahabad

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALAHABAD

Ex. Appeal No.1801/06

Arising out of OIA No.31-CE/MRT-II/2006 dated 22.02.2006 passed by
Commissioner of Central Excise (Appeals), Meerut II.

For approval and signature:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

1. Whether Press Reporters may be allowed to see
the Order for publication as per Rule 27 of the
CESTAT (Procedure) Rules, 1982?

Yes

2. Whether it should be released under Rule 27 of the
CESTAT (Procedure) Rules, 1982 for publication
in any authoritative report or not?

Yes

3. Whether His Lordship wishes to see the fair copy
of the Order?

Yes

4. Whether Order is to be circulated to the Departmental
Authorities?

Yes

M/s Rattan Vanaspathi Ltd.

APPELLANT(S)

VERSUS

Commissioner of Central Excise, Meerut II

RESPONDENT (S)

APPEARANCE

Shri Bipin Garg, Adv. for the Appellant (s)
Shri V. K. Shastri, A.C. (A.R.) for the Department

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

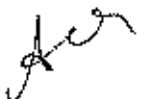
DATE OF HEARING & PRONOUNCEMENT : 28.10.2015

Find order no. 70067/2015

Per Mr. Anil Choudhary :

The Appellant, M/s Rattan Vanaspati Ltd., is in Appeal against Order-in-Appeal No. 31-CE/MRT-II/2006 dated 22.02.2006 passed by Commissioner of Central Excise (Appeals), Meerut II.

2. Brief facts are that the appellants are engaged in the manufacture of vegetable products falling under chapter 15 of Central Excise Tariff Act, 1985. The appellant was availing benefit of money credit scheme as per provisions under rule 57K to 57P of the erstwhile Central Excise Rules 1944, read with notification 45/89-CE as amended by Notification No.13/90-CE. The appellant had a credit balance of Rs.35,15,643/- on account of "money credit scheme" in their RG-23B Part II as on 23.07.96, when Notification No.45/89 was rescinded and vegetable product become exempt. The brief background of the scheme is that vide Notification No.27/07-CE, the input credit of the specified amount on the minor oils (input) was allowed like Mahua oil, watermelon oil, etc. and the said credit could be used for clearance of final products being vegetable product, subject to the utilization of credit not exceeding Rs.1,000/- per Ton of final products cleared and excess credit, if any, available in the credit account shall not be refunded to the manufacture or adjusted or utilized for payment of duty on any excisable goods under any other circumstances. The notification number 27/87 was rescinded by notification number 39/89 with effect from 25/8/89 when the vegetable product became non-taxable. The same credit scheme was again introduced by notification number 45/89 dated 11/10/89 which



was again rescinded vide notification number 16/96 dated 23/7/96. Thus vegetable product remained exempt with effect from 24/7/96 up to 28/2/2003. With effect from 1/3/2003 Excise duty was imposed on the vegetable product. As on 1/3/2003, the appellant was having credit balance of Rs.35,15,643/- which remained unutilized at the time of the rescinding of scheme on 23/7/1996. It appeared to revenue that the appellant cannot take and/or utilized the credit lying with them as on 1/3/2003 and the same had lapsed. As the appellant had availed or utilized Cenvat credit of the said balance to the tune of Rs.18,05,056/- vide show was notice dated 16/4/04 the appellant ~~require~~ was required to show as to why the amount of credit so debited from the lapse credit may not be demanded from them under section 11 A and further penalty was proposed under Rule 25, for violation of rule 4 and rule 8 of Central Excise Rules along with interest. The appellant contested the show cause notice by filing reply to the effect that the credit taken legally gives vested right, which cannot lapse under subordinate legislation being rescission of notification under the provisions of the Act and the Rules. However, in the circumstances the appellant stopped utilising further credit. The said SCN was adjudicated vide order-in-original dated 7/9/2005 and the proposed demand of Rs. 18, 05, 056 was confirm along with interest. Further penalty of Rs. 10 lakhs was imposed under rule 25 of the Central Excise Rules. Being aggrieved the appellant preferred appeal before the Commissioner (Appeals) vide the impugned order. was pleased to reject the appeal and uphold the order in original. Being aggrieved the appellant is before this Tribunal.

[Signature]

3. The Id. Counsel for the appellant states that the issue is no longer *res-integra*. He relies on the ruling of the Honourable Gujarat High Court in the case of M/s Madhusudan Industries Ltd Vs. Union of India 2014 (309) ELT 54, wherein under similar circumstances, M/s Madhusudan Industries Ltd. had accumulated money credit by use of unconventional/minor oils and limited prohibition, was imposed by revenue on the utilization of same. The Hon'ble High Court held that money credit was a mandatory right earned by manufacturers on purchasing and use of unconventional/minor^{or} oils, for which the manufacturer may have changed manufacturing process and plant hoping of getting the money credit. ~~Th~~^U~~ose~~ such vested right cannot be taken away due to the rescission of the notification. Manufacturer therefore were ~~not~~ entitled to use the money credit in terms of the notification and the money credit scheme. It was held that credit would not lapse and manufacturer is entitled to use the same in future. The Honourable High Court also referred to the ruling of the Apex Court in the case of Commissioner versus Rasol Ltd 2005 (185) ELT A170 wherein under similar facts and similar money credit scheme it was held by the Honourable High Court that the manufacturer is entitled to utilize the money credit lying in their RG 23B. The said desition was confirmed by Honourable Supreme Court reported at 2005 (18) ELT A170. Accordingly the Id. Counsel prays for allowing the appeal with consequential benefit including utilization of any balance credit which could not be utilized due to restriction imposed by the revenue.

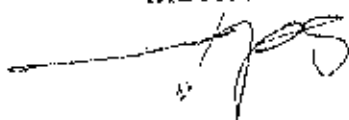
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4. The Id.DR relies on the impugned order. He further emphasizes that once the scheme is rescinded their accumulated credit under the scheme also lapses. He further relies on the ruling of Honourable Supreme Court in the case of Eisher Motors Ltd. Vs. Union of India : 1999 (106) ELT 3, wherein it was held that right to adjust tax on final products accrued to the assessee on the date, when they paid the tax on the raw materials or the inputs. Such right vested on the basis of statutory scheme. Sec.37 of Central Excise Act, does not enable authorities to make rule to effect lapsing of credit balance in modvat account.

5. Having considered the contentions I find that the issue is squarely covered in favour of the appellant in view of the ruling of Honourable High Court in the case of M/s Madhusudan Industries limited (supra) following the ruling of the Apex Court in the case of the Rasol Limited (supra). Accordingly, in the facts and circumstances, I hold that the appellant is entitled to utilise the Cenvat credit lying in its balance as on 1/3/2003 and the said credit had not lapsed. Accordingly the appellant will be entitled to utilise the balance credit which could not be used in view of the restriction of the revenue resulting into the present proceedings in appeal. Thus the appeal is allowed with consequential benefits if any, in accordance with law and the impugned order is set aside.

(Dictated and pronounced in the open Court)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)



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CHANDIGARH
10/03/2003
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