FAX : 0532-2400149 REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 28/09/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71161-71162/2017-EX[DB] dated 25/09/2017

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.

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	E/2563/2007	A.K.ENTERPRISES B-20/1-A, FOUNDRY NAGAR, AGRA, U.P.
2	E/2564/2007	A.K.ENTERPRISES B-20/1-A, FOUNDRY NAGAR, AGRA, U.P.
		Name and Address of Respondent
3		-C.C.E. KANPUR 117/7, Sarvodaya Nagar, Kanpur 208005.
4		-C.C.E. KANPUR 117/7, Sarvodaya Nagar, Kanpur 208005.

Other Appellants and Respondents as per Annexure

Copy To

5 Advocate(s) / Consultant(s):

Prabhat Kumar
B-51(BASEMENT), SARVODAYA ENCLAVE
NEAR MOTHER INTERNATIONAL SCHOOL ,NEW DELHI

6 Bar Association, CESTAT, Allahabad

7 Director Publications, Customs, Excise, I.P. Estate, Delhi

8 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

9 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

10 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

11 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

12 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi – 110070

13 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

14 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

15 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

16 C.D.R. 17 Office Copy 18 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

REGIONAL BENCH : ALLAHABAD

COURT No. I

APPEAL Nos. E/2563 & 2564/2007-EX[DB]

(Arising out of Order-in-Appeal No. 265-266/CE/APPL/KNP/2007 dated 25/07/2007 passed by Commissioner of Central Excise & Customs (Appeals), Kanpur)

M/s A.K. Enterprises **Appellant(s)**

Vs.

Commissioner of Central Excise, Kanpur **Respondent(s)**

Appearance:

Shri S.S. Dabas (Advocate) for Appellant(s)
Shri Rajeev Ranjan (Joint Commr.) AR for Respondent(s)

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 06/10/2016
Date of Decision : 06/10/2016

FINAL ORDER NOs...71161-71162/2017

Per: Anil Choudhary

The common issue involved in these appeals is regarding availability of SSI exemption under Notification No. 8/2003, as amended the appeals are taken up together for disposal.

2. In the Financial Year 2004-2005, the appellant was availing of the facility of Cenvat Credit under the Credit Rules and paying normal rate of duty on the final products; and that in Financial Year 2005-2006, they opted to avail of full

exemption under SSI exemption Notification No. 8/2003- CE dated 01.03.2003 which is automatic without filing of any intimation to department.

3. The learned Counsel for the appellant states on 31.03.2005, the appellant was having no stock of finished goods. However, they had certain inputs either in stock or in process involving Cenvat Credit of Rs. 2,593/-, which they were required to reverse in terms of Rule 11(2) of the Credit Rules.

4. However, due to ignorance, they couldn't pay the said amount of Rs. 2,593/- as required under Rule 11(2) of the Credit Rules.

5. Appellant had deposited the said amount of Rs. 2,593/- with interest of Rs. 200/- involved thereon vide T.R.6 Challan dated 07.10.2005, which fact is recorded in Para-5 of both the Orders-in-Original.

6. Thus, the requirement of Rule 11(2) of the Credit Rules has been satisfied as amount of Cenvat Credit involved has been paid along with interest.

7. That delayed payment of Cenvat Credit alongwith interest tantamount to its payment on the due date itself.

8. Though there was no need but the appellant sent an intimation by UPC dated 01.04.2005, stating therein that he would be availing full exemption with effect from 01.04.2005 in terms of Notification No. 8/2003-CE dated 01.03.2003. However, it is alleged that the department did not receive the

said letter of intimation dated 01.04.2005.

9. The Department entertained the view that the appellant was not entitled to the exemption under the SSI Notification dated 01.03.2003 on the grounds of non-reversal of the Cenvat Credit of Rs. 2,593/- on 31.03.2005 and non-filing of the intimation that the appellant would be availing full exemption with effect from 01.04.2005.

10. The case of Revenue is that the appellant started availing the benefit of small-scale exemption under the Notification without complying with the condition of Rule 11 of Cenvat Credit Rules, 2004. As per the Revenue the manufacturer who opts for exemption from whole of the duty of excise leviable on the goods and who had been taking Cenvat Credit on inputs before such option exercised, shall be required to pay an amount equivalent to Cenvat Credit, if any, allowed to him in respect of inputs lying in stock or in process or contained in the final product lying in stock on the date when such option is exercised. The Revenue's further contention is that the appellant never informed the Revenue regarding the quantity of inputs lying in stock on the date they started availing the benefit of Small-Scale Notification.

11. The appellant was issued with two show cause notices as follows: -

Sr. No.	SCN issued on	Disputed period	Disputed amount (in Rupees)
1.	12.07.2006	April 2005 to June 2005	3,46,939/-
2.	11.10.2006	July 2005 to December 2005	4,96,568/-
			Total= 8,43,507/-

12. Both the show cause notices were confirmed vide separate Order-in-Original denying the SSI exemption observing that there is violation of condition as provided under Rule 11(2) of CCR 2004, which are mandatory and are to be followed by the assessee at the first stage of opting SSI exemption under the Notification. The appellant's defence dated 08 January, 2007 exclusively based on fulfilment of conditions in Para-2 of Notification No. 8/2003, is not relevant and are quite unsustainable because the appellant themselves opted to avail SSI exemption under said Notification and not paying normal rate of duty on goods cleared during the Financial Year 2005 – 2006.

13. Being aggrieved the appellant preferred appeal before learned Commissioner (Appeals) who vide the impugned order. Being a common order have been pleased to uphold the rejection of SSI exemption and confirmed the demands.

14. Being aggrieved the appellant is in appeal before this Tribunal. The learned counsel for the appellant have urged the following grounds: –

"(i) There is no requirement of exercising of the option in writing for availing full exemption under the said notification dated 01.03.2003. Such exemption is automatically available if all other conditions are satisfied.

(ii) It is settled law that availing of full exemption from the first day of April of every year is automatically available to the assessee, if all other conditions are satisfied, and there is no requirement in Para-2 of Notification dated 01.03.2003 of filing of any prior intimation or obtaining of any permission, if an assessee wants to avail of the full exemption. Appellant also places reliance on the ruling of this Tribunal in *Mistry Brothers Versus Commissioner of Central Excise, Ahmedabad-2006 (200) ELT 350 (Tri. Mumbai)*, wherein it was held that to avail exemption under the relevant Notification–SSI exemption. There is no need to exercise the option in writing. The said ruling was with respect to Notification No. 8/99–CE as amended by Notification No. 16/99-CE which are pari materia with the Notification No. 80/2003–CE. It is also alleged that it is settled law that Trade Notice issued by one Commissionerate is binding on all Commissionerates in the country. So as to maintain uniformity. It was so held in *Steel Authority of India Versus Collector of Customs, Bombay-2000 (115) ELT 42 (SC)*.

(iii) In the instant case, all the conditions required to be fulfilled for availing of full exemption have been satisfied and there is no allegation to the contrary.

(iv) Exemption under Notification No. 8/2003 – CE dated 01.03.2003 is not deniable merely on the grounds that the appellant did not pay the amount equivalent to the CENVAT credit involved on utilized inputs, inputs contained in finished goods and in process before exercising the option; and that the appellant did not furnish the details of balance and CENVAT credit as on 01.04.2005.

(v) The aforementioned requirement is procedural in nature and for infarction of any procedural requirement, the substantial benefit cannot be denied as per the settled principle of law. Reliance is placed on the following case law:- *Packaging India Pvt. Ltd. Versus Commissioner of C.Ex. Meerut – 2013 (294) ELT 246 (Tri. Del.).*

(vi) The appellant is not to be blamed if the intimation sent by him on 01.04.2005 under UPC is not found in the records of the department. However, there is no requirement of filing of any such intimation.

(vii) There is no contravention of any of the rules as alleged in the impugned order."

15. Learned AR for Revenue have relied on the impugned order.

16. Having considered the rival contentions we find that the whole show was notice is misconceived. There is no allegation that the appellant had any credit balance in their Cenvat Credit account as on 01 April, 2005. Under the provisions of Rule 11(2) of CCR, 2004 what is required is to be written off is

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Cenvat Credit lying unutilized in the Cenvat Credit Register on date of option to avail exemption. Thus, we find that the show cause notices are misconceived. Further, we find that the appellant had suo motu deposited the Cenvat Credit on the inputs lying in stock and also given intimation to the Revenue. We also notice that such deposit was made prior to issue of show cause notices. Accordingly, we hold that the impugned orders are not sustainable. Accordingly, the appeals are allowed and the impugned orders are set aside. The appellant shall be entitled for the consequential benefits in accordance with law.

(Dictated and pronounced in Court)

-Sd/-
(ANIL G. SHAKKARWAR)
Member (TECHNICAL)

-Sd/-
(ANIL CHOUDHARY)
Member(JUDICIAL)

Ankit

प्रमाणित प्रति/Certified True Copy
13/10/17

सहायक पंजीकार/Asstt. Registrar
सीमा शुल्क, उत्पाद शुल्क एवं सेवा कर
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38, M. G. MARG ALLAHABAD-211001