

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Appeal No. E/3476/2006

Date 03/09/2007

Assistant Registrar
C.E.S.T.A.T., New Delhi

To:
COMMISSIONER OF CENTRAL EXCISE JALANDHAR
COMMISSIONER JALANDHAR (HQURS AT
CHANDIGARH), REVENUE BUILDING, PLOT NO.19,
SECTOR 17-C, CHANDIGARH

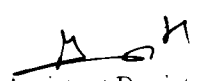
COMMISSIONER OF CENTRAL EXCISE JALANDHAR

Appellant

KAPSONS INDUSTRIES LTD. (UNIT-I)

Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No. 485/07-EX. dated 26-7-07
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944


Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent

KAPSONS INDUSTRIES LTD. (UNIT-I)

G.T. ROAD, SURANASSI, JALANDHAR(PB).

2. Adv. / Consult

SH. J. P. KAUSHIK, ADV.,
A-14/3, SFS FLATS,
SAKET, N. DELHI-17

3. C.D.R.

~~4. J.C.D.R.~~

5. Bar association, CESTAT, New Delhi

6. M/s. Deeparchi Publications, M-93, marg. 43, saket, New

7. M/s Centax Publications (P) Ltd., 1512-E, Bhishm Pitamah

8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301

9. R.Venkatraman Constt. 44-B, S.Suncity, Ghaziabad -

10. Nidheshak publications, I.P.Estate, new Delhi

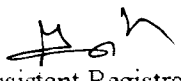
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh.

12. Co. Law Institution

13. TAX INDIA, B-XI/8183, Vasant Kunj, New Delhi - 110070

14. Office Copy

15. Guard file


Assistant Registrar
(Excise Appeal Branch)

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

Appeal No.E/3476/2006-

(Arising out of the Order-in-Original No.119-122/CE/JLAL/2005 dated 18.11.2005 passed by the Commissioner of Central Excise, (Hqrs at Chandigarh), Jalandhar) .

For approval and signature:

Hon'ble Mr. C.N.B. Nair, Member (Technical)
Hon'ble Mr. P.K. Das, 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?

yes

CCE, Jalandhar

Appellant

Vs.

M/s.Kapsons Industries Ltd.(Unit-1)

Respondent

Appearance:

Shri Sanjay Kumar, Authorised Representative (DR)- For appellant

Shri J.P. Kaushik, Advocate - For respondents

CORAM:

Hon'ble Mr. C.N.B. Nair, Member (Technical)
Hon'ble Mr. P.K.Das, Member(Judicial)

Date of decision: 26.7.2007.

Order No. 85/2007 EX dated

Per P.K. Das:

The relevant facts of the case, in brief, are that the respondents were engaged in the manufacture of Stamping and Lamination falling under Chapters 83 & 85 of the Central Excise Tariff Act, 1985. They were also undertaking job work of aluminium castings and electrical stampings. The respondents received duty paid inputs i.e. CR Sheets availed CENVAT Credit for the purpose of use in the manufacture of finished goods cleared on payment of duty. They were also procuring CR sheets from the principal manufacturer for job work under the proper challan, no CENVAT Credit was availed. Show cause notices were issued, alleging that the respondents were using duty paid inputs CR sheets for the manufacture of job work goods. It has been alleged that duty paid CR sheets were used in the manufacture of own dutiable finished goods and exempted job work goods and, therefore, the respondents are liable to pay 8% of the value of the exempted goods under Rule 6(3) of the Cenvat Credit Rules, 2002. The Commissioner of Central Excise dropped the demand of duty. Revenue filed this appeal against the order of the Commissioner.

2. The learned D.R. on behalf of the Revenue submits that the respondent had not maintained separate stock/record for consumption of raw material received for job work under Notification No.214/86-CE dated 25.3.86 and Cenvatable inputs



used for manufacture of their own finished goods. He submits that the respondent is not eligible to avail credit on inputs used in the job work and, therefore, they are liable to pay the amount under Rule 6(3) of CENVAT Credit Rules. He further submits that the respondents were working under the provisions of Notification No.214/86-CE dated 25.3.86 but no procedure was followed by them.

3. The learned advocate on behalf of the respondent reiterates the findings of the Commissioner. He submits that the respondents were procuring CR sheets from the principal manufacturer, who availed Cenvat credit. He further submits that the goods were received accompanied with the challans issued under Rule 4(5) (a) of the Cenvat Credit Rules. He placed specimen copy of the challan before the Bench. He further submits that they have not availed any credit on the CR sheets received from the principal manufacturer and, therefore, Rule 6(3) of the Cenvat Credit Rules cannot be applicable herein. He relied upon the decisions of the Tribunal as under:-

- (1) Sterlite Indus.(I) Ltd. Vs. CCE, Nagpur
2005 (183) ELT 353 (Tribunal-LB)
- (2) M. Tex & DK Processors (P) Ltd. Vs. CCE
2001 (136) ELT 73 (Tribunal)
- (3) M. Tex & DK Processors (P) Ltd. Vs. CCE
2002 (146) ELT A 309 (SC).
- (4) P&P Fabrics (P) Ltd. Vs. CCE.
A 2000 (41) RLT 466 (CEGAT)
- (5) CCE, Jaipur Vs. Milan Mills
2001 (46) RLT 623 (CEGAT)
- (6) Lupin Laboratories Vs. CCE, Indore
1994 (71) RLT 914 (Tribunal)



(7) Kitply Industries Ltd. Vs. CCE, Noida
2003 (57) RLT 915 (CEGAT).

4. After hearing both the sides and on perusal of the records, the relevant portion of the Adjudication Order for the purpose of proper appreciation of the facts and the issues of the present case are reproduced below:-

“ As per facts on record, I note that the Noticee are engaged in the manufacture of Electrical Stamping & Lamination (Ch.Heading 83.12), Parts of Electrical Machinery (Ch. Heading 85.03) and Aluminium Castings (Ch. Heading 76.16) in their own account which is cleared on payment of duty after availment of modvat/cenvat credit on the inputs used in the manufacture of said excisable goods. Therefore, it is very clear that they are manufacturing dutiable goods in their own account.

It is also on record that the Noticees are also manufacturing Electrical Stampings & Laminations and Aluminium Castings on job work basis on behalf of principles namely:-

1. Kapson Industries Ltd., Chandigarh-C.R.Strip/C.R.Coil
2. Kapson Industries Ltd., Faridabad-C.R.Coil/Alum.Ingot
3. Tecumseh Products India Pvt. Ltd.-C.R. Sheet
4. Rockman Cycles Industries Ltd.,Ludhiana-Alum.Ingots
5. Brook Crompton Greaves Ltd.,Ahmednagar-C.R.Sheet
6. Munjal Castings Ludhiana-Aluminium Ingots

and all the basic raw materials like Cold Rolled Strip/Cold Rolled Coil/Cold Rolled Sheet and Aluminium Ingots are supplied by the said principles. The department has alleged that the said Electrical Stampings & Laminations and Aluminium Castings manufactured by the Noticee on job work basis are exempted goods and that since the Noticee have used some of their modvatted/cenvatted inputs in the manufacture of said job work goods, these are covered under the provisions of Rule 57CC(1), 57AD(2)(b) of the Rules and Rule



6(3)(b) of CCR 2001 & 2002 and therefore chargeable to the said amounts @ 8% or @10% of the sale value of the said exempted job worked goods.

Now the question arises as to whether or not the said Electrical Stampings & Laminations and Aluminium Castings manufactured by the noticee on job work basis out of the raw materials supplied by the principles, can be treated as exempted goods under the provisions of the Modvat Credit/Cenvat Credit Rules.”

5. The Ld. Advocate on behalf of the Respondent has taken us the copy of challan, on the basis of which the respondent received the raw material from the principal manufacturer for job work. It is seen that the said challans were issued under Rule 4(5) (a) of Cenvat Credit Rules 2002, which is reproduced below:-

“(5) (a) The CENVAT credit shall be allowed even if any inputs or capital goods as such or after being partially processed are sent to a job worker for further processing, testing, repair, re-conditioning or any other purpose, and it is established from the records, challans or memos or any other document produced by the assessee taking the CENVAT credit that the goods are received back in the factory within one hundred and eighty days of their being sent to a job worker and if the inputs or the capital goods are not received back within one hundred eighty days, the manufacturer shall pay an amount equivalent to the CENVAT credit attributable to the inputs or capital goods by debiting the CENVAT credit or otherwise, but the manufacturer can take the CENVAT credit again when the inputs or capital goods are received back in his factory.”

6. On plain reading of Rule 4(5)(a), it is clear that the manufacturer shall take credit of duty paid inputs or capital goods



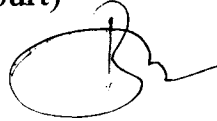
sent to a job worker. So, the manufacturer would pay duty on the goods returned back by the job worker after processing. The duty liability on job work goods is on the manufacturer and not on the job worker. Therefore, in the present case before us, we observe that Electrical Stampings of Laminations and Aluminium Casting manufactured by the respondent on job work basis under Rule 4(5)(a) of Cenvat Credit Rules cannot be treated exempted goods and the recovery of the amount under Rule 6(3) of Cenvat Credit Rules is not sustainable. It is seen that the Tribunal in the case of Shree Rayalaseema Dutch Kassenbown Ltd. Vs. CCE, Tirupathi – 2006 (76) RLT 464 (CESTAT-Bombay) held that demand of duty on job worker working under Rule 4(5)(a) for the reason that raw material supplier has not followed the provision of Notification No.214/86-CE, is not correct. Hence, the contention of the Revenue, in the present case, that the procedure under Notification No.214/86-CE were not followed, has no merit.

7. We find that the Larger Bench of the Tribunal in the case of Sterlite Industries (I) Ltd. Vs. Commissioner of Central Excise, Pune – 2005 (183) ELT 353 (Tribunal-LB) following the decision of Hon'ble Supreme Court in the case of Escorts Ltd. Vs. C.C.E. – 2004 (171) ELT 145 (S.C.), held as under:-

“By applying the ratio of the above decision, it becomes clear that Modvat credit of duty paid on the inputs used in the manufacture of final product cleared without payment of duty for further utilization in the manufacture of final product, which are cleared on payment of duty by the principal manufacturer, would not be hit by provision of Rule 57C. Inasmuch as, the matter stands decided by the Honourable Supreme Court, we would hold in favour of assessee.”

8. In view of the above, we find that the Commissioner rightly dropped the demand under Rule 6(3) of Cenvat Credit Rules, 2002 on job work material. There is no reason to interfere the Order of the Commissioner. Accordingly, the appeal filed by the Revenue is dismissed.

(Order pronounced in open Court)



(C.N.B. Nair)
Member (Technical)



(P.K. Das)
Member (Judicial)

Rcs.