

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

Appeal No. E/3314/2005 and E/3793, E/95/06 and 85/07

Date 13/08/2007

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

To :
BHARAT STARCH INDUSTRIES LTD
N-75, A DIVISION OF ENGLISH INDIAN CLAYA LTD,
CONNAUGHT CIRCUS, NEW DELHI

2. M/s. BHARAT STARCH INDUSTRIES,
(A-DIVISION OF M/S. ENGLISH INDIAN
CLAYS LTD.)
RADAUR ROAD, YAMUNA NAGAR

3. M/S. ENGLISH INDIAN CLAYS LTD.

(FORMERLY BHARAT STARCH INDUSTRIES) RADAUR ROAD
YAMUNA NAGAR
Appellant
Vs
Respondent

BHARAT STARCH INDUSTRIES LTD

C.C.E. PANCHKULA

I am directed to transmit herewith a certified copy of Final order No. 443-446/07 dated 03-7-07
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944


Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent

C.C.E. PANCHKULA
SCO NO. 407 AND 408, SECTOR 8, PANCHKULA
(HARYANA).
134119

4. M/s. BHARAT STARCH INDUSTRIES,
RADAUR ROAD, YAMUNA NAGAR


2. Adv. / Consult

SH. B.L. NARASIMHAN, ADV.,
B-6/10, S.5, ENCLAVE,
N. DELHI - 29

3. S.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


(MOHINDER SINGH)
Assistant Registrar
(Excise Appeal Branch)

**IN THE CUSTOMS, EXCISE AND SERVICE TAX
APPELLATE TRIBUNAL, NEW DELHI**

**PRINCIPAL BENCH NEW DELHI
COURT NO.III**

- 1-3. Appeal No.E/3314/05, 3793/06 and 85/07-Excise.
4. E/95/06-Excise.**

(Arising out of the Order-in-original No.9-14/Comm/PKL/2005 dated 26.7.2005 passed by the Commissioner of Central Excise, Panchkula, No.7-8/Commr/PKL/2006 dated 31.8.2006 passed by the Commissioner of Central Excise, Panchkula, No.9/Commr/PKL/2006 dated 29.9.2006 passed by the Commissioner of Central Excise, Panchkula) .

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? :
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1. M/s. Bharat Starch Industries Ltd..
2. M/s. Bharat Starch Industries.
3. M/s. English Indian Clays Limited. Appellants.

Versus

- 1-3. CCE, Panchkula . Respondent
4. CCE, Panchkula. Appellant.

Versus

4. M/s. Bharat Starch Industries. Respondents.

Appearance

Shri B.L. Narasimhan, Advocate and Shri Puneet Bansal,
Advocate for the applicants.
Shri S.M. Tata, Authorized Representative (DR) for the
respondent.

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

Date of decision:3.7.2007.

Final Order No. 443 To 446/2007 EX

Per C.N.B. Nair:

The main dispute in all these appeals is the same.
Therefore, they were heard together and are disposed of by this
common order.

2. M/s. Bharat Starch Industries are engaged in the
manufacture of plain and modified starch, Corn Gluten,
Esterified starch, Gum/P-gum, Glucose, Soap Stock, Maize
Oil, Maize Oil cake and Maize Bran. All items other than
plain maize starch and corn gluten are liable to excise duty and
the appellant was clearing their produce accordingly. The
assessee is eligible, and has been availing of Cenvat credit also.
Under the impugned order, demand has been made in regard to
goods cleared without payment of duty on the ground that

Cenvat Credit Rules permitted of such demand. The dispute resolves around the scope of Rule 6 of those rules.

3. Rule 6 relates to the obligation of a manufacturer who produces both dutiable and exempted goods. Sub-rule(1) of that rule states that Cenvat credit shall not be allowed on such quantity of inputs which is used in the manufacture of exempted goods. Sub-rules (2) & (3) are exception to this rule. While sub-rule (2) stipulates that where a manufacturer avails of Cenvat credit in respect of any inputs and manufactures such final products which are chargeable to duty as well as exempted goods (as in the appellant's case), then, the manufacturer shall maintain separate accounts for receipt, consumption and inventory of inputs meant for use in the manufacture of dutiable final products and the quantity of inputs meant for use in the manufacture of exempted goods and take Cenvat credit only on that quantity of inputs which is intended to be used in the manufacture of dutiable goods. Sub-rule (3) stipulates that the manufacturer, opting not to maintain separate accounts shall follow the conditions laid down in (a) or (b) of that sub-rule. It may be noted straightway that sub-rule (b) provides that the manufacturer shall pay an amount equal to 8% of the total price of exempted final products cleared from the factory.

4. In the present case, since the assessee was manufacturing dutiable (plain maize starch and corn gluten) and exempt goods (maize oil, soap starch etc), separate accounts and inventory etc. of all the inputs going into the production of dutiable and exempted products were kept. But no separate account was made in regard to lubricating oil and transformer oil. These oils are filled in the ^(machinery) capital goods used and Credit had been taken on them also. The amount of Credit taken was about Rs.8 lacs. Revenue authorities took view the that the appellant had opted not to keep separate account of inputs (the aforesaid oils) used in the manufacture of both dutiable and exempted goods and, were, therefore, liable to pay 8% of the value of the exempted goods cleared. This has resulted in the demand of about Rs.8 Crores, even though the disputed credit was only Rs.8 lacs. The present appeals of the assessee challenge those demands.

5. Appeal No.E/95/06 of the Revenue contends that the interest demand made by the Commissioner is incorrect and the same is required to be increased upward.

6. We take up the assessee's case first.

7. The contention of the learned counsel for the assessee is that the assessee's case is not covered by sub-rule (3) of Rule 6 at all inasmuch as they had not opted "not to maintain

separate accounts" in relation to inputs. The submission is that sub-rule (3) comes into play only in the event of such an option. The learned counsel would point out that the fact that the assessee had kept separate account of all inputs other than lubricating and transformer oils actually proves to the contrary, that the assessee was working under sub-rule (2) of the Rules by keeping separate accounts of inputs going into manufacture of exempted goods.

8. As regards failure to keep separate accounts and inventory of lubricating and transformer oils, the submission of the learned counsel is that since they are used in machinery (which takes part in the production of both dutiable and exempted goods), it is impossible to allocate the inputs productwise. The learned counsel has also a legal submission that since a rule cannot be construed as requiring the performance of ^{the} impossible, the use of such common inputs should ^{not} be taken into account. All the same, the learned counsel would submit that, if Revenue is of the opinion that these oils are also required to be allocated in terms of sub-rule (2) of Rule 6, Revenue may make such allocation and demand Cenvat credit. The learned counsel would emphasize that, in any event, demand under sub rule 3(b) at the rate of 8% cannot be made as that would be contrary to the facts of the case and

provisions of the rule. Further, there would be no correlation between the benefit(Cenvat) derived by the manufacturer and the demand raised.

9. The learned D.R. would submit that the assessee's contention regarding impossibility of allocation is not correct as any cost of manufacture, direct or indirect, is capable of allocation among the goods manufactured.. The learned DR would also emphasis that rule 6 makes no exception in relation to inputs used in production, whether use is direct or indirect.

10. Upon perusal of the record and on hearing the submissions, we agree that this is not a case where the assessee had opted not to maintain separate accounts of inputs as contemplated by sub-rule (3) of Rule 6. As a matter of fact, separate accounting of all inputs(except the two items) was being made and this shows that the assessee's intention was to account inputs separately and to work under sub-rule (2) of Rule 6. The reason for failure to separately account these oils also remains properly explained . There is also no suppression of facts inasmuch as taking of credit on the disputed oils was entered in the books of accounts.

11. All that is required in the facts and circumstances of the case is to allocate the two oils also, if so required, to the final

products manufactured. However, sufficient material on that aspect has not been brought on record by either side. The impugned orders are, therefore, set aside in as much as they relate to Cenvat dispute on lubricating and transformer oils and the cases are remitted to the original authority for a fresh decision as to whether and how lubricating and transformer oils are to be separately accounted/allocated proportionately and to revise the demand suitably. The dispute raised in the Revenue's appeal can be considered only upon such allocation.

12. Appeal No.E/85/07 involves an additional ^{issue,} i.e. Cenvat credit of service tax paid in regard to goods transport. It is seen that credit has been taken in relation to outward transport of final products and, therefore, it was not available in the light of the Tribunal's decision in the case of Ambuja Gujrat Vs. CCE - 2007 (6) STR-249. Therefore, the demand on account of service tax made in the order is confirmed. However, the penalty imposed is set aside since the demand was raised during normal period and penalty is not attracted to such a demand and that the dispute is purely legal in nature.

13. All the appeals are disposed of in the above terms.

(Dictated and pronounced in open court).

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

(P.K. Das)
Member(J).

(rcs).