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

Appeal No. E/3049,3142,3593TO3597/2004 Date 22/05/2008

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

To :
M/S GRASIM INDUSTIES LTD.
M/S GRASIM INDUSTIES LTD., CHEMICAL DIVISION, BIRLAGRAM, NAGDA
456331
M/S GRASIM INDUSTIES LTD.

2. M/s. GRASIM INDUSTRIES LTD., SIAPLE FIBRE DIVISION, EXCISE SECTION BIRLAGRAM, NAGDA-456331(MP)

Appellant
Vs
Respondent

C.C.E. INDORE

I am directed to transmit herewith a certified copy of **Final order No.** 265-271/08 **Excise** dated 23-4-08 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. INDORE
   THE COMMISSIONER OF CENTRAL EXCISE, MANIK BAGH PALACE P.O.-10, INDORE (M.P.)
2. Adv. / Consult Sh. RAVI RAGHVAN, ADV., B-6/10, S.J. 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. 46, Saket, New Delhi 110017
7. M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12. Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai 60017
13. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R.K.Puram, New Delhi-110066.
Principal Bench, New Delhi.

E/3049, 3142, 3593 to 3597/04

[Arising out of Order-in-Appeal No.66-73-CE/IND/APPL-II/04 dt.26.2.04 passed by the Commissioner(Appeals), Indore)

For approval and signature:

Hon'ble Mr. S.S. KANG, VICE PRESIDENT
Hon'ble Mr. RAKESH KUMAR, 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?		No
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:	no
3.	Whether their Lordships wish to see the fair copy of the order?	:	yes
4.	Whether order is to be circulated to the Department Authorities:	:	no.

M/s. Grasim Industries Ltd. Appellant

Versus

CCE, Indore Respondent

Appearance

Shri Ravi Raghvan, Adv. For Appellant

Shri Sanjay Kumar, Authorised Departmental Representative(DR) For Respondent

Coram: Hon'ble Mr. S.S. KANG, VICE PRESIDENT
Hon'ble Mr. RAKESH KUMAR, MEMBER TECHNICAL

Date of decision: 23.4.08
FINAL Order No. 265-271/08-EX

Per S.S.Kang:

Heard both sides. The appellant filed these appeals against the common impugned order whereby refund was rejected by the Commissioner(Appeals). Commissioner(Appeals) held as under:

> "In view of the above facts, I hold that since Appellants have not produced any proof that goods were used for repair and maintenance only for the satisfaction of the authority as required under Notification No.281/86 dt.24.4.86. Apart from the aforesaid findings, refund claims are not admissible to the Appellant as they failed to produce original duty paying documents as per Section 11B (1) of the Central Excise Act,1944. Refund claims also not admissible to the Appellants as they failed to give details of amount of Modvat availed on inputs used in the manufacture of goods purchased by them. Although protest letter filed by M/s. Grasim E & DD is applicable to the Appellants and claims could not be held time barred on this ground, accordingly refund claims are not admissible to the Appellants and impugned orders passed by the Adjudicating Authority rejecting the refund claims are sustainable under law, I uphold the same and dispose of the Appeals by this way".

2. The contention of the appellant is that their Engineering & Development Division (E&DD) were manufacturing parts which are used for repairs and maintenance in the other manufacturing units. The Engineering & Development Division claimed the benefit of Notification No.281/86-CE which provides exemption from payment of duty to all excisable goods manufactured in a workshop within a factory and intended for use in the said factory or in any other factory of the same manufacture for repairs and maintenance of machinery installed therein. The contention is that the revenue issued a SCN denying the benefit of this notification. During the pending proceedings, the E&DD cleared the goods to other manufacturing units on payment of duty. The adjudicating authority vide order dt.16.7.91 held that E&DD is entitled for the benefit of exemption Notification No.281/86-CE for the goods manufactured and used for maintenance and repairs of the machinery installed. After passing an adjudicating order, the other units where the parts manufactured by the E&DD were received on payment of duty filed refund claims. The adjudicating authority rejected the refund claims. The appellant filed an appeal. The Commissioner(Appeals) rejected the appeal on the ground that

the conditions of Notification No.281/86-CE were not complied with. The contention is that the appellants are the recipient of the goods cleared by E&DD on payment of duty. The adjudicating authority allowed the exemption provided under Notification No.281/86 to the manufacturing units i.e. E&DD. No demand is raised till today against the manufacturing units on the ground that conditions of the notification are not fulfilled, therefore, the denial of benefit of Notification No.281/86-CE at the recipient end is not sustainable. The contention is also that in the refund application, the applicant specifically mentioned that all the goods received from the manufacturing unit are used for maintenance and repair purposes and there is no evidence on record contrary to this fact. It is also submitted by the appellant that the refund claims were rejected on the ground that the original duty ~~paid~~ paying documents were not produced. The contention is that all the duty paying documents were produced alongwith the refund application, therefore, the finding is not sustainable. The refund was also denied on the ground that the manufacturing unit availed the credit in respect of inputs used in the manufacture of goods received by the appellant on payment of duty. The contention is that Modvat credit availed by the manufacturing unit has been reversed and this evidence has been produced before the lower authority. However, this fact was not taken into consideration. In these circumstances, the contention is that, the impugned order is not sustainable.

3. The contention of the revenue is that one unit of appellant is manufacturing part and clearing to the other division for repairs and maintenance of the plant and machinery under the claim of benefit of Notification No.281/86, therefore, the lower authority has rightly said that the onus is on the appellant to show that conditions of notifications are fulfilled. The revenue also submitted that the Hon'ble Supreme Court in the

case of Sahakari Khand Udyog Mandal Ltd. vs CCE reported in 2005(181)ELT.328(SC) held that unjust enrichment is applicable to all refunds and assessee has to show that the amount for which refund is sought, has not passed on to customers.

4. We find that in the impugned order, the refund claim was rejected on the ground that the present appellants failed to show that condition of Notification No.281/86 were complied with. We find that E&DD of the appellant were manufacturing the parts and claiming the benefit of the notification No.281/86. Initially the benefit was denied and manufacturing unit cleared the goods on payment of appropriate duty after availing the benefit of Modvat credit. Subsequently the adjudicating authority allowed the benefit of this notification. In pursuance to the order passed by the adjudicating authority allowing the benefit of notification to the manufacturing unit, the appellant filed refund claims in respect of goods received by them regarding which they had paid duty. There is no demand on the manufacturing unit on the ground that the conditions of Notification No.281/86 were not fulfilled. In these circumstances, the denial of refund claim is on the ground that conditions of notification were not fulfilleld is not sustainable and set aside.

5. In respect of the other finding, the appellant had not produced original duty payment documents alongwith the refund claim which are still with the revenue and the appellant also produced the evidence that Modvat credit availed by manufacturing unit had already reversed. The revenue also raised the issue of unjust enrichment and this issue had not gone into by the lower authority. In view of these circumstances, we find that the matter requires reconsideration by the adjudicating authority. The impugned order is set aside and matter is remanded to decide afresh in view of the evidence on

record and in view of the decision of the Hon'ble Supreme Court relied upon by the revenue and after affording opportunity of hearing. The appeals are disposed of by way of remand.

Order dictated in the open Court.

(S.S.Kang)
Vice President

(Rakesh Kumar)
Member Technical

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