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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/3619/2006 Date 03/06/2008

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

To :
C.C.E. ROHTAK

SCO NO,6 SECTOR 1, ROHTAK.

C.C.E. ROHTAK Appellant

Vs

M/S MITTAL INTERNATIONAL Respondent

I am directed to transmit herewith a certified copy of **Final order** No.309/2008 **Excise** dated 28-4-08

passed by the Tribunal under Section 35-C(1)of Central Excises Act. 1944

Assistant Registrar

(Excise Appeal Branch)

Copy to :

1. Respondent

M/S MITTAL INTERNATIONAL

G.T.ROAD. SEWAH. PANIPAT(HARYANA)

2. Adv. / Consult

MR.BIPIN GARG

B-1/1289.A-VASANT KUNJ. NEW DELHI

3. E.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, NEW DELHI
PRINCIPAL BENCH, NEW DELHI
COURT NO. II

Excise Appeal No. 3619 of 2006-Ex.

(Arising out of Order-in-Appeal No. 207/NS/RTK/2006 dated 14.7.2006 passed by the Commissioner of Central Excise (Appeals), Gurgaon)

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 Departmental authorities.	No

CCE, Rohtak — Appellant

Vs.

M/s Mittal International — Respondent

Appearance:
Shri V. Chaudhary, DR - For appellant
Shri Bipin Garg, Advocate - For respondent

CORAM:
HON'BLE MR. S.S. KANG, VICE PRESIDENT
HON'BLE MR. RAKESH KUMAR, MEMBER (TECHNICAL)

Date of Hearing: 28.4.2008

FINAL Order No. 307/08-Ex. dated............

Per S.S. Kang:

Heard both sides.

2. The issued involved in this appeal is whether the refund of Cenvat Credit of AED (Textile & Textile articles) paid on inputs ~~of~~ under Additional Duties of Excise (Textile and Textile Articles) Act (AED & T&T),

used in the manufacture of final product exported under rebate claim under Rule 18 of Central Excise Rules on payment of duty, is available under Rule 5 of Cenvat Credit Rules, 2002. We find that this issue is settled by the decision of the Tribunal in the case of **CCE Vs. Indo Dane Textile Industries** reported in 2007 (213) ELT 117. The Tribunal held as under :-

> "Under Rule 18 of the Central Excise Rules, 2002, the Central Government may, by notification, grant rebate of duty paid on such excisable goods or duty paid on materials used in the manufacture or processing of such goods and the rebate shall be subject to such conditions or limitations as may be specified. While Rule 18 applies to grant of rebates of duty by virtue of notification issued thereunder, Rule 19 relates to export without payment of duty subject to the safeguard conditions, as may be specified by notification issued by the Board. It is by virtue of the requirement in the notification issued under sub-rule (3) of Rule 19 that the question of bond or letter of undertaking could arise. Such Notification 42/2001-CE, dated 26.6.2001, was issued by the Central Board of Excise and Customs under sub-rule (3) of Rule 19, which provided export under bond of the goods which were exported from the factory without payment of duty. The exporter was required to furnish a general bond in the form specified without payment of excise duty. In the present case, admittedly, there

were no exports without payment of excise and, therefore, Rule 19 had no applicability. Thus, no question had arisen of execution of bond as required by the said notification issued under Rule 19(3) by these respondents. They admittedly exported the goods by payment of excise duty which was done by adjusting the basic excise duty which was payable under the Central Excise Act, 1944, for which the rebate claim was made under Rule 18. Rebate is granted "of duty paid" on the excisable goods, as contemplated by Rule 18. No additional excise duty was payable on the final products and therefore, rebate could have been claimed only in respect of the duty paid which was the specific excise duty relatable to Rule 18 read with Section 3 of the Central Excise Act, 1944. No application for rebate of additional excise duty which was paid on the inputs, was made under Rule 18 read with Section 3 of the Additional Duties of Excise (Textile and Textile Articles) Act. Therefore, an application for refund of such additional excise duty by way of Cenvat credit in the account of the respondents could be made under Rule 5 of the Cenvat Credit Rules by these respondents. They were not debarred under the proviso to Rule 5 of the Cenvat Credit Rules, because they had not claimed rebate of the additional excise duty under Rule 18, since no such claim could have been made, because no additional excise duty was payable in respect of the final product. Moreover, they also did not apply for rebate of the additional excise duty which was paid in respect of the inputs and for which Modvat credit was taken. Therefore, an application under Rule 5 for refund of such Cenvat credit was not hit by the proviso to Rule 5 in the case of these respondents. Since no question of execution of bond had arisen because, the exports were not made without payment of duty, as contemplated by Rule 19, the refund claim could not have been rejected on the ground that the bond was not executed. It is not the purpose of Rule 5 of the Cenvat Credit Rules to deny refund even in the cases in which the question of execution of bond cannot arise, when the inputs are used in the final products which are cleared for export or used in the intermediate products cleared for exports, but for any reason, the adjustment of duty of excise on the final product cleared for export on payment of duty is not possible. In any event, there was no allegation in the show cause notice against the respondents as regards their having exported without bond, and hence the Commissioner (Appeals) was justified in not entertaining that ground canvassed by the Revenue.

The facts clearly disclose that the Commissioner (Appeals) was right in holding that there was ample evidence to show that the inputs were used in the final product which was exported on payment of duty. Under Rule 3(b) of the Cenvat Credit Rules, credit in respect of additional duties of excise leviable under Section of the Additional Duties of Excise (Textile and Textile Articles) Act could be utilized towards payment of additional duty of

> under the Central Excise Act, 1944 in respect of which rebate claim was separately made under Rule 18. The rebate claim was confined only to basic excise duty. Therefore, it did not debar the appellant from claiming refund of additional excise duty under Rule 5, since the Cenvat credit relating to such duty could not be adjusted."

3. The Revenue filed appeal and the Hon'ble Punjab & Haryana High Court vide order dated 12.10.07 dismissed the appeal. In view of the above decision, we find no merit in the appeal filed by Revenue, the same is dismissed.

(Dictated & pronounced in open Court)

(S.S. KANG)
VICE PRESIDENT

(RAKESH KUMAR)
MEMBER (TECHNICAL)

RM