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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/1920/2006 Date 03/06/2008

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

To :
M/S GOYAL PROTEINS LTD.
NH-12, VILLAGE: KASAR, DISTRICT KOTA (RAJ)

M/S GOYAL PROTEINS LTD. Appellant

Vs

C.C.E. JAIPUR I Respondent

I am directed to transmit herewith a certified copy of **Final order** No.313/2008 Excise dated 27-5-08 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. JAIPUR I
   N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.
2. Adv. / Consult
   ~~MR SANJAY GROVER~~
   ~~LAW OFFICES, E-500, GREATER KAILASH-II, NEW DELHI-110 048.~~
   SH. K.K.ANAND. ADV., A-5, BASEMENT, LAJPATNAGAR-III N. DELHI-24
3. C.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

COURT – II

EXCISE APPEAL NO. 1920 OF 2006

[Arising out of Order-in-Original No. 12-13/2006 dated 7.3.2006 passed by the Commissioner of Customs & Central Excise, Jaipur]

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

M/s. Goyal Proteins Ltd., Appellants

Vs.

CCE, Jaipur Respondent

Appearance:

Shri K.K. Anand, Advocate for the appellants,
Shri A.N. Sharma, Jt. CDR, Departmental Representative, for the respondent

Coram:

Hon'ble Mr. S.S. Kang, Vice President,
Hon'ble Mr. Rakesh Kumar, Member (Technical)

Date of Hearing: 1st April, 2008

FINAL ORDER NO. 313 / 08-EX **dated** ________

Per S.S. Kang:

Heard both sides.

2. Appellants filed this appeal against the adjudication order passed by the Commissioner of Central Excise whereby demand was confirmed and penalty imposed on the ground that the appellants are manufacturing excisable as well as exempted goods by using common inputs on which cenvat credit has been taken, hence, liable to pay 8% or 10% of the value of exempted goods as per provisions of Rule6(3)(b) of CENVAT Credit Rules, on the clearance of exempted goods.

3. Contention of the appellants is that they are engaged in the manufacture of Refined Vegetable Oil through solvent extraction method. During the manufacture of final product De-oiled cake, gum and Hexon came into existence and they cleared without payment of duty. Contention is that demand is for the period 30th April, 2003 to 28th February, 2005. They received two show cause notices, show cause notice dated 21.9.2005 for demand for the period 30.4.2003 to 30.11.2004 alleging suppression, and second show cause notice dated 9.12.2005 was for the period 1.12.2004 to 28.2.2005. Contention is that, as the appellants were filing the necessary monthly return showing clearance of goods on payment of duty as well as exempted goods,

therefore, the allegation of suppression with intent to evade payment of duty is not sustainable. The Revenue vide letter dated 26.6.2003, for the first time, asked the appellants to pay Central Excise duty @ 8% of price of exempted goods as per Rule 6 of CENVAT Credit Rules. Contention is that, as in the year 2003, Revenue was aware that the appellants were clearing goods, manufactured out of common inputs, without payment of duty as well on payment of duty, therefore, invocation of extended period is not justified as allegation of suppression of facts with intent to evade payment of duty is also not sustainable. The appellants relied upon the decision of the Tribunal in the case of Maize Products vs. CCE, reported in 2007 (79) RKLT 662. The appellants submitted that they are ready to reverse whole of the credit availed in respect of common inputs used in the manufacture of excisable as well as exempted goods.

4. Contention of the Revenue is that, as the appellants were taking credit in respect of common inputs and not maintaining separate record, therefore, they are liable to pay 8% or 10% of the exempted goods as per CENVAT Credit Rules. Revenue relied upon the decision of the Larger Bench of the Tribunal in the case of Rallies India Ltd. Vs. CCE, Salem, reported in 2007 (208) ELT 25 (Tri.-LB) to submit that in case common inputs are used in the manufacture of excisable goods and exempted By-products, manufacturer is liable to pay 8% of value of By-product. In respect of contention of the appellants that they are ready to

reverse the credit, Revenue relied upon the decision of the Hon'ble Supreme Court in the case of Amrit Paper vs. CCE, Ludhiana, reported in 2006 (200) ELT 365 (SC) to submit that reversal of credit after clearance of goods will not help the case of the appellants.

5. We find that the appellants are engaged in the manufacture of excisable and exempted goods and were taking credit in respect of common inputs. Two show cause notices were issued to the appellants for demand of duty on the ground that as per provisions of Central Excise Rules in respect of exempted goods manufactured out of common inputs, manufacturer has to pay 8% or 10% of the value of the exempted goods.

6. Demand is for the period 30.4.2003 to 28.2.2005. Two show cause notices were issued, one for the period 30.4.2003 to 30.11.2004 on 21.9.2005 by invoking extended period of limiation and, second for the period 1.12.2004 to 28.2.2005 on 9.11.2005. The appellants were regularly filing monthly return showing clearance of goods on payment of duty as well as without payment of duty. On examining the returns the Revenue vide letter dated 26.6.2003 directed the appellants to pay 8% of the value of exempted goods. As the Revenue was aware on 26.6.2003 that the appellants were taking credit in respect of common inputs and clearing products without payment of duty as well on payment of duty, therefore, charge of suppression of facts with intent to evade payment of duty is not sustainable, hence, the demands beyond

the normal period of limitation are time barred, hence liable to be set aside.

7. In respect of demand of remaining period, we find that now the appellants are ready to reverse whole of the credit availed on common inputs. Revenue has relied upon the decision of the Hon'ble Supreme Court in the case of Amrit Paper (supra) wherein the manufacturer was availing credit in respect of duty paid on inputs and clearing the godos on payment of duty and, thereafter, suo moto reversed the credit and filed refund claim in respect of duty paid on the ground that the goods are exempted from payment of duty under Notification No. 6/2006. In such a situation Hon'ble Supreme Court held that when the condition of notification was that exemption is available only in case when credit has not been taken in respect of duty paid on inputs the benefit of notification is not available. In the present case facts are different. In the present case the appellants submitted that they want to reverse whole of the credit availed on common inputs used in the manufacture of excisable as well as exempted goods. This situation is covered by the Tribunal in the case of Maize Products (supra). The Tribunal after considering the earlier decision of the Tribunal has held as under:-

"We have carefully considered the submissions. We are convinced that the demand is highly dis-apportionate to the credit availed on the common inputs which could be attributed to goods which have been cleared without payment of duty. We are not going to the merits of the decision of the Commissioner in so far as the same relates to dropping of the demand in the four show cause notices as the Department is not in appeal before us. We are inclined to accept the offer of the appellant company to reverse the entire credit attributable to the exempted product covered in the nine show cause notices and accordingly we set aside the order of the Commissioner confirming the demand in respect of the nine show cause notices with the direction to consider and accept their offer to reverse the entire credit on the common inputs i.e., caustic soda lye and hydrochloric acid. The department shall re-determine the credit taken on the common inputs i.e., caustic soda lye and hydrochloric acid in so far as they relate to demand proposed in the 9 show cause notices. The assessee shall produce the necessary evidence in the form of chartered accountant's certificate for the relevant period. If any further credit is to be reversed, the same shall be reversed within four weeks from the date of receipt of the communication from the department."

In view of the above decision of the Tribunal the demand for the normal period is set aside and the matter is remanded to the adjudicating authority with the direction to accept the offer of the appellants to reverse the entire credit on the common inputs and the Revenue shall re-determine the credit taken on common inputs and the appellants will produce necessary evidence in respect of credit availed on common inputs. Impugned order is set aside and the appeal is disposed of as indicated above.

(Pronounced on 27.5.08)

(S.S. KANG)
VICE PRESIDENT

(RAKESH KUMAR)
MEMBER (TECHNICAL)

Dated 6th May, 2008
RK