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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/3809/2004 Date 08/07/2008

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

To :
M/S PERFETTI VAN MELLE INDIA PVT. LTD.
REGD OFF: D-62 DEFENCE COLONY, NEW DELHI
110024

M/S PERFETTI VAN MELLE INDIA PVT. LTD. Appellant
Vs
C.C.E. GURGAON Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 422/08- **Excise** dated 11-7-08
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. GURGAON
   UDYOG VIHAR, UDYOG MINAR, VANIJYA NIKUNJ, PHASE V, GURGAON
2. Adv. / Consult
   MR. V. LAXMIKUMARAN
   B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029
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)

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

Court No.III

Date of hearing : 1.7.2008
Date of pronouncement: 7.2008

Central Excise Appeal No.3809 of 2004

Arising out of the Order in original No.12/2004 dated 21.4.2004 passed by the Commissioner of Central Excise , Gurgaon.

For Approval and Signature:

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. M. Veeraiyan, Member (Technical)

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2	Whether it should be released under Rule 27 of 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?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

Appellants		Respondent
M/s Perfetti Van Melle India Pvt. Ltd.	vs.	C.C.E., Gurgaon

Appearance:

Shri V. Laxmikumaran with Shri R. Ravi Advocates for the appellants and Shri H.K. Thakur, Authorized Departmental Representative (Jt.CDR) for the Revenue

Coram: Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. M. Veeraiyan, Member (Technical)

Final Order No. 422/08-EX.

Per Archana Wadhwa:

The appellants are engaged in the manufacture of chewing gum , toffee, candy, containing cocoa etc. which items are notified under Section 4A of the Central Excise Act for payment of duty on the basis of MRP.

2. The appellants are also availing the benefit of Cenvat Credit in respect of the inputs used in the manufacture of final product. The dispute in the present case relates to the credit of duty availed by the appellants in respect of 'Tattoos' on the ground that the same are not eligible for the purpose of modvat credit inasmuch as, the same are being placed inside the pack of chewing, toffee as a sale promotion scheme and cannot be considered as inputs. Accordingly, show cause notice dated 30.7.03 was issued to the appellants raising the demand of duty of Rs.1,81,88,429/- for the period September 2001 to June 2002. The said duty stands confirmed against the appellant by the impugned order of the Commissioner along with confirmation of interest and imposition of penalty of identical amount in terms of the provisions of Rule 13 and the Cenvat Credit Rules, 2001/2002 read with Section 11AC and 38A of the Act ibid.

3. We have heard Shri V. Laxmikumaran, Advocate with Shri R.Ravi, Advocate appearing for the appellants and Shri H.K.Thakur, Jt.CDR appearing for the Revenue. The learned Advocate argued the matter on merits as also on the point of limitation but fairly drew our attention to the earlier order of the Tribunal in the case of Jayco India Pvt. Ltd. vs. C.C.E., Chandigarh – 2007 (220) ELT 123 (Tri-Del.) dealing with identical dispute holding that tattoos supplied with bubble gum cannot be held eligible

input and as such, not ~~extended~~ entitled to credit. After going through the said judgment of the Tribunal dealing with identical dispute, We do not find any justifiable reason to take a different view. Accordingly, we hold against the appellants on merits.

4. However, in respect of limitation, we find that the period involved is from October 2001 to March, 2003 whereas the show cause notice was issued on 30th July, 2003. As such, a part of the demand is beyond the period of limitation of one year as provided under Section11A of the Act. While dealing with the said plea of the appellants, the Commissioner has observed as under:

> " *Coming to the plea of the assessee, regarding non-applicability of provisions of extended period, I find that the assessee, vide their letter dated 14.8.2002 , had intimated the department that they were running sales promotion scheme. Entries in respect of ' tattoos', were however, made in RG-23A part I w.e.f. 18.10.2001 by describing the impugned tattoos as packing material. This was positively a misdescription. I further discover that the taking of credit on impugned tattoos was started in the RG-23A Pt.II w.e.f.t 30.11.2001, but the Department was informed almost nine months later vide the letter dated 14.8.2002. Thus, the material facts were first misdescribed, and later suppressed almost for nine months till 14.8.2002. As the show cause notice was issued within a period of one year from the date of disclosure of relevant facts, I find that the assessee's plea relating to time bar is unmerited, and therefore, the whole amount, proposed in SCN for demand, is recoverable from the assessee in terms of provisions of Rule 12 of the CENVAT Credit Rules, 2001/2002, and Section 11A of the Central Excise Act, 1944. The assessee is liable to interest, on the amount of demand, in terms of Section 11AB of the Act ibid.* "

As is clear from the above , Commissioner has taken the date of writing the letter by the appellant on 14.8.02 as the relevant date for the purpose of computing the normal period of limitation of one year, while at the same time, admitting that entries in respect of tattoos were made in RG-23A part - I w.e.f. 18.10.2001. As such, it becomes clear that irrespective of writing letter dated 14.8.02, the fact of availing any credit in respect of tattoos was being reflected in their statutory records duly maintained by the appellants in the normal course. The appellants have also contended that the fact of availing the Cenvat credit stands intimated to the Departmental officer in all of their statutory returns. The show cause notice has also been issued on the basis of the scrutiny of their statutory records only. As such, it cannot be said that the credit was availed with mala fide intention or there was suppression on the part of the appellants. As such, we find no justification for invoking the extended period of limitation. The demand is required to be restricted for a period of one year from the date of issuance of show cause notice. For the said purpose, we remand the matter to Commissioner for quantification of the demand within a period of one year from issuance of show cause notice. Further, inasmuch as the issue involved is about legal interpretation of the Modvat provisions and ~~also~~ as already held that no suppression, misstatement or mala fide are attributable to the appellants, we do not find any justifiable reason for imposition of penalty upon the appellants. The same is accordingly set aside. The appeal is disposed of in above terms.

(Pronounced in the open Court on 7.2008)

(Archana Wadhwa)
Member (Judicial)

(M. Veeraiyan)
Member (Technical)

scd/