

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

Appeal No. E/2914/2007&1002/07

Date 18/07/2008

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

To :
M/S HMM COACHES LTD.

VILLAGE MANDOUR, AMBALA CITY,

M/S HMM COACHES LTD.

Appellant

Vs

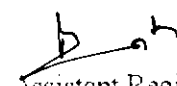
Respondent

C/O E. PANCHKULA

I am directed to transmit herewith a certified copy of **Final order No. 480-481-2008-**

Excise dated **26-6-08**

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



Assistant Registrar

(Excise Appeal Branch)

Copy to :

1. Respondent

C/O E. PANCHKULA

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

2. Adv. Consult

MR. GAGAN KOHLI

2. SH. V. L. KUMARAN, ADV.,

394, SECTOR-30 A, CHANDIGARH.

B-6/10, S. J. E. N. DELHI-29

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 Publications (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)

1

**CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST BLOCK-II, R.K. PURAM, PRINCIPAL BENCH, NEW DELHI,
COURT NO. III**

Excise Appeal No. 2914 & 1002 of 2007

[Arising out of Order-in-Original No. 01/Commr/PKL/2007 dated 24.01.2007
passed by the Commissioner of Central Excise, Panchkula]

Date of hearing/ decision: 26.06.2008

Hon'ble Mr. M. Veeraiyan, Member [Technical]
Hon'ble Mr. P.K. Das, Member [Judicial]

M. Veeraiyan

1	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	Yes
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
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

M/s HMM Coaches Limited

...Appellant
[Rep. by Mr. Ravi Raghavan, Advocate]

Vs.

CCE, Panchkula

...Respondent
[Rep. by Mr. H.K. Thakur, Jt. CDR]

Final ORDER 480-481/08-EX

Per: M. Veeraiyan:

This is an appeal against the order of the Commissioner No. 01/Commr/PKL/2007 dated 24.01.2007.

2. Heard both sides.

3. The relevant facts, in brief, are as follows:-

a) The applicant is fabricating bus bodies on duty paid chassis received from M/s Tata Motors, the manufacturer of chassis.

b) While clearing the chassis, M/s Tata Motors have paid the applicable duty including Rs. 10,000/- additional basic excise duty leviable on chassis imposed in the Budget of 2003.

M. Veeraiyan

c) The appellant received the duty paid chassis and from August 2003, taken cenvat credit of duty paid on chassis which was @ 16% + Rs. 10,000/- per chassis along with Education cess; they also took credit of duty paid on other inputs such as MS and GI Sheets, Paint, MS Pipes etc.

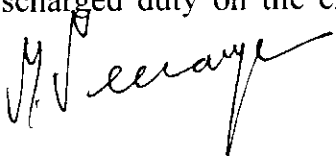
d) The appellant, after body building, cleared the body built vehicle discharging duty on the entire value of the said body built vehicle including the value of chassis.

4. Show cause notice was issued seeking to recover inadmissible cenvat credit amounting to Rs.15,79,86,975/-. Commissioner has held that the appellant has taken and utilized inadmissible credit in contravention of the provisions of Rule 3 of Cenvat Credit Rules, 2004; they should not have taken the credit; they should have availed the benefit of Notification No. 6/2002 dated 01.03.2002; however, he held that the extended period is not invocable; accordingly he confirmed the demand of, Rs. 8,84,63,492/- for the period April 2005 to Feb. 2006 under Rule 14 of Cenvat Credit Rules, 2004 read with Section 11A of Central Excise Act, 1944; he ordered recovery of interest on the confirmed demand of duty of Rs. 8,84,63,492/-. He imposed a penalty of Rs. 8,84,63,492/-.

5. Learned Advocate for the appellant submits the following:-

a) Notification No. 6/2002 dated 01.03.2002 grants only partial exemption; it is also subject to fulfillment of the condition specified therein; the exemption is not absolute in nature. Therefore, the said notification cannot be thrust on the assessee. The provisions of Section 5A(1A) cannot be applied in such a situation.

b) The view taken by the Commissioner that in terms of explanation to Rule 3(7) of Cenvat Credit Rules, they are not eligible to take credit is incorrect. They have procured the chassis on which duty has been paid; credit was taken on the duty paid on the chassis and other materials. The body built vehicle has discharged duty on the entire value of the said body built vehicle including the



value of chassis. The condition of the notification is that it debars only the credit relating to chassis.

c) Even if there was partial exemption for any goods, the credit of duty paid on the inputs cannot be denied in terms of rule 3. The intention of rule 3(7) is that a person availing a notification which was subject to the condition that cenvat credit cannot be availed on the inputs, cannot cite rule 3 of Cenvat Credit Rules to claim that there was no bar for availing such credit. In the present case, the chassis has paid the duty; there is a partial exemption for body built vehicle on the condition that cenvat credit was not taken on duty paid on chassis; it did not exclude credit being taken on other inputs meant for body building. It is not a case where they have taken cenvat credit and availed the notification which was issued on the condition that cenvat credit cannot be taken.

6. Learned DR submits that the body built vehicle has been granted an exemption on the condition that cenvat credit is not availed on duty paid on the chassis. When such a condition is there, the body building unit cannot take credit in terms of rule 3(7). Once they cannot take credit under Rule 3(7) they are free to avail exemption under Notification No. 6/2002. In effect, they would have paid more excise duty. He seeks upholding the order of the Commissioner.

7.1. We have carefully considered the submissions from both sides. When chassis was cleared as such by the chassis-builder, required duty of excise has been paid. The appellant, as a body building unit, has taken credit of duty paid on the chassis; they have also taken credit of duty paid on other inputs. Body built vehicle has been cleared on payment of applicable rate of duty and on the entire value of the vehicle i.e. on value inclusive of value of chassis. In other words, benefit of Notification No. 6/2002 dated 01.03.2002 has not been availed by them.

7.2. The submissions that Notification No. 6/2002 being conditional granting only partial exemption cannot be forced on them is valid. Section 5A (1A) reads as

follows:-



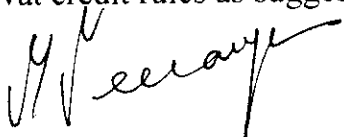
“(1A) For the removal of doubts, it is hereby declared that where an exemption under sub-section (1) in respect of any excisable goods from the whole of the duty of excise leviable thereon has been granted absolutely, the manufacturer of such excisable goods shall not pay the duty of excise on such goods”. as they have not fulfilled the condition for availing the said notification. The said notification is a conditional notification granting only partial exemption and, therefore, provisions of Section 5A(1A) are not applicable to them.

7.3. The levy of additional basic excise duty is only on the chassis and not on body built vehicle and this appears to be a conscious policy decision. If the chassis-manufacturer himself has built the body then duty was payable only as a body built vehicle on the entire value of body built vehicle at the applicable rate. The intention of Government appears to be to encourage integrated body builders as seen from the budget speech for the year 2003-2004. The relevant portion is extracted below:-

“163. Presently, there is an iniquitous duty structure between buses and trucks, manufactured by an integrated unit, vis-à-vis independent body builders, who are exempt from excise duty. To reduce the duty differential and to promote body building by integrated bus and truck manufacturers, as a measure of road safety, I propose to increase the duty on **chassis** from 16 per cent, to 16 per cent plus Rs. 10,000 per **chassis**, cleared for outside body building. The body building activity in the unorganized sector would, however, continue to remain exempt”.

7.4. The ultimate cause of the dispute is that the chassis has suffered additional basic excise duty and credit was taken and the said credit was utilized for paying body built vehicle but there was no additional basic excise duty on the body built vehicle. The appellant has saved Rs. 10,000/- by not availing Notification No. 6/2002. This is basically a consequence of extra duty on the chassis alone.

8.1. When Section 5A (1A) does not compel the appellant to avail the exemption notification like 6/2002, it cannot be forced on them by interpreting cenvat credit rules as suggested by the Department.



8.2. The relevant portion of Rule 3 of the Cenvat Credit Rules as follows:

"RULE 3. CENVAT credit -(1) A manufacturer or producer of final products or a provider of taxable service shall be allowed to take credit (hereinafter referred to as the CENVAT credit) of-

(i) any input or capital goods received in the factory of manufacturer of final product or premises of the provider of output service on or after the 10th day of September, 2004; and

including the said duties, or tax, or cess paid on any input or input service, as the case may be, used in the manufacture of intermediate products.

(7) Notwithstanding anything contained in sub-rule (1) and sub-rule (4).

Explanation- While the provisions of any other rule or notification provide for grant of whole or part exemption on condition of non-availability of credit of duty paid on any input or capital goods, or of service tax paid on input service, the provisions of such other rule or notification shall prevail other than provisions of these rules".

8.3. Rule 3 provides for credit of specified duty paid on 'any inputs' subject to the condition mentioned therein. Viewed in the totality of the context, the term 'any inputs' shall mean 'all inputs'.

8.4. Normally an exemption notification stands independently of the input credit relief scheme. Whenever an exemption is granted subject to the condition that the assessee does not avail cenvat credit, then the assessee should not allowed to take recourse to the provisions of rule 3 of Cenvat Credit Rules and avail credit as well. This is will lead to availing double benefits. A benefit of lower rate of duty on condition that the credit was not taken and also the benefit of cenvat under Rule 3. The provisions of rule 3 (7) aims at denying such double benefits. When credit is to be denied it has to be credit on 'any inputs' which in the context would mean credit on 'all inputs'.

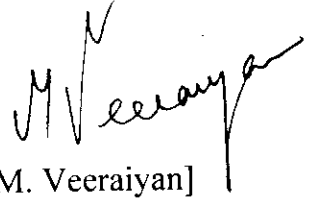
8.5. The notification 6/2002 bars credit of duty paid only on chassis. The interpretation of explanation to Rule 3(7) has the effect of denying the credit on all inputs. If there was no bar on taking credit on chassis as a condition in the notification, then the Rule 3(7) would not be applicable. The interpretation of

[Handwritten signature]

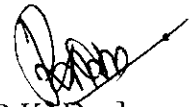
explanation to rule 3 (7) should not lead to a situation of introducing additional condition in the notification i.e. they shall not take credit on 'any inputs' (i.e. all inputs) or forcing them opt for other wise an optional notification. We are of the view that Rule 3(7) has to be applied only in cases where the exemption notification is on the condition that no input credit on any of the inputs is available.

9. Therefore, the appeals are allowed with consequential relief.

[Operative part of the order pronounced in the open Court].



[M. Veeraiyan]
Member [Technical]



[P.K. Das]
Member [Judicial]

[Pant]