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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/2270/2006&E/1102/07 Date 28/08/2008

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

To :
M/S NAV BHARAT IMPEX
C-24, LAWRANCE ROAD, INDL. AREA, NEW DELHI -35
110035

M/S NAV BHARAT IMPEX — Appellant
Vs
C.C.E. DELHI I — Respondent

I am directed to transmit herewith a certified copy of **Final order** No.650-651/08-EX **Excise** dated 27-8-08 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. DELHI I
   C.R. BUILDING, I.P. ESTATE, NEW DELHI 110002
2. Adv. / Consult SH. L.P. ASTHANA, R-163, G.K.I, N. DELHI-48
   2, SH. NAND KISHORE, 112, EIL APARTMENT, PLOT NO. 13, POCKET-6, DWARKA, N. DELHI-45
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. Easy Service Tax Online Dot Com Pvt. Ltd. 407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad - 15
15. Office Copy
16. Guard file

Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. III

Excise Appeal No. 2270 of 2006 & 1102/2007

[Arising out of Order-in-Original No. 08/ 2006 dated 28.4.2006 passed by Commissioner of Central Excise, Delhi I.]

For approval and signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)
Hon'ble Mr. P.K. Das, Member (Judicial)

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1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? :
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? :
3. Whether Their Lordships wish to see the fair copy of the Order? :
4. Whether Order is to be circulated to the Departmental authorities? :

M/s. Nav Bharat Impex — Appellant

Vs.

Commissioner of Central Excise. New Delhi — Respondent

And

Commissioner of Central Excise New Delhi — Appellant

Vs.

M/s. Nav Bharat Impex — Respondent

Appearance:

Mr. L.P. Asthana & Mr.Nand Kishore & Mr.A.Jaju, Advocates for the Appellant
Mr. V.Choudhary, SDR for the Respondent

CORAM: Hon'ble Mr. M. Veeraiyan, Member (Technical)
Hon'ble Mr. P.K.Das, Member (Judicial)

Date of Hearing : 26.6.08 & 27.6.08
Date of decision : 27.8.08

FINAL **ORDER NO. 650 - 651 / 05 -EX**

Per P.K. Das (for the Bench):

The appellant filed this appeal against the order of Commissioner of Central Excise wherein it has been held that the Cenvat Credit on the inputs Menthol flakes used in Menthol powder was wrongly availed by the appellant and the Cenvat credit amounting to Rs.7,46,23,357/- of Excise duty, amount of Rs. 12,70,929.00 of Education Cess taken during the period May, 2004 to June, 2005 shall be treated as non-est and to be reversed from the Cenvat account and also imposed a penalty of Rs. One lakh on the appellant. The Revenue filed appeal for imposition of penalty of equal amount of duty under Section 11AC of Central Excise Act.

2. The relevant facts of the case as per record, in brief, are that the appellants were engaged in the manufacture of Menthol powder amongst others at their factory. They purchased raw material Menthol flakes from M/s. Aar Bee industries Jammu accompanied with central excise invoices showing the payment of duty of excise. The supplier of raw materials were availing the benefit of exemption notification No. 56/02-CE dated 14.11.02. The Central Excise officers visited the appellants factory on 5.5.05 and drew the samples of raw materials namely, Menthol flakes and final product Menthol powder from their factory. A show cause notice dated 5.8.05 was issued proposing to disallow the credit on Menthol flakes on the basis of test report of CRCL. It has been alleged that the process carried out by the appellant from Menthol flakes to the final product Menthol powder does not amount to "manufacture" and, therefore, the appellants are not entitled to avail the Cenvat credit. The Commissioner of Central Excise in the

impugned order disallowed credit on Menthol flakes and imposed penalty. Hence, the appellant filed these appeals before the Tribunal.

3. The learned advocate on behalf of the appellants submits that the appellant exported the final product Menthol powder and claimed rebate under Rule 18 of Central Excise Rules, 2002. The Commissioner of Central Excise, Delhi filed Revision application before the Joint Secretary, Government of India against sanctioning of rebate claim, which has been rejected by order No.1109/2006 dated 27.12.06 passed by the Joint Secretary to the Government of India. He also submits that the Government of India accepted the processing undertaken by the appellant is within the definition of "manufacture" under Central Excise Act, 1944. So, the impugned order passed by the Commissioner of Central Excise is not sustainable. He relied upon the report of Dr. H.M. Chawla, Professor of IIT, Delhi, wherein it is stated that the ~~construction~~ conversion of Menthol flake into Menthol powder amounts to "manufacture". He cited several decisions of the Tribunal in support of his contention that the process undertaken by the appellant is within the definition of 'manufacture'. He also submits that it is well settled by series of decisions of the Tribunal that the assessee paid the duty on the final product and therefore, credit cannot be denied on the inputs.

4. The learned SDR on behalf of the Revenue reiterates the findings of the Commissioner of Central Excise. He submits that the Commissioner of Central Excise in the impugned order elaborately discussed that the process undertaken by the appellant does not amount to "manufacture". He relied upon series of decisions of the Tribunal wherein it has been held that no change of essential character of the product on processing does not amount to "manufacture". He also submits that the order of the revisional authority relating to sanction of rebate has no relation to disallow Cenvat credit.

5. After hearing both the sides and on perusal of the records, it is seen that the appellant cleared the final product Menthol powder for export on payment of duty from Cenvat account under ARE-1 Procedure. It has been observed by the Commissioner that Menthol flakes received by the appellant and Menthol powder produced by them are falling under the same heading of Schedule to the Central Excise Tariff Act, 1985 except the difference in the purity. It has further been held that Menthol before processing and after processing remains Menthol only and the same is marketed as such and it does not come within the purview of the definition of "manufacture" under section 2(f) of Central Excise Act, 1944. It has been observed on the basis of test report that Menthol flakes (83% approx) used as inputs which were processed by them and used in the production of Menthol powder (90% approx). The adjudicating authority held that conversion of Menthol flakes into Menthol powder does not amount to manufacture and the appellant is not eligible to utilise Cenvat credit on the finished products under Rule 3(4) and Rule 16 of Cenvat Credit Rules, 2004.

6. On the other hand, that the appellant strongly relied upon the report of Dr. H.M. Chawla, Professor, IIT Delhi to prove that conversion of Menthol flakes into Menthol powder amounts to "manufacture". They have also relied upon various decisions of the Tribunal on this issue. We find that the appellants exported Menthol powder and filed rebate claims under Rule 18 of Central Excise Rules, 2002 which was sanctioned by the Deputy / Assistant Commissioner of Central Excise. The Revenue filed the appeal before the Commissioner (Appeals), which was rejected. Further, the Revenue filed appeal before the Revision authority, which was rejected vide order No. 1109/06 dated 27.12.06. The issue before the revisionary authority was as to whether Cenvat credit is admissible and available on

Menthol flakes and where the duty paid by utilising the credit on resultant product Menthol powder is admissible as rebate. The relevant portion of the said order is reproduced below:-

> "7. Perusal of the Order-in-Appeal also shows that the detailed chemical report of IIT Delhi which clearly implies manufacturing to have taken place and also resulting in emergence of a new and different product has nowhere been effectively challenged technically apart from the cryptic report of CRCL which merely mentions the percentage content of Menthol in Menthol flakes and Menthol powder and fails to address the main points necessary for determining whether or not "manufacture" has taken place. Observations and conclusions drawn by Commissioner (Appeals) in this regard thus do not seem to be misplaced especially with reference to export-oriented schemes where also as per Board's Circular No. 489/55/99-CX, dt. 13.10.99 [F.No. 209/30/99-CX-VI] even if a process does not conform to manufacture, a wider connotation has to be applied for the purposes of export benefit and which has been relied upon in a number of judgements, including Winsome Yarns – 2004 (172) ELT 286 (Tri-Del), PET Plastics – 2006 (195) ELT 280 (Tri-Mum) and Weston Electronics [2000(116) ELT 181(Tri)].
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> 8. In the facts and circumstances of the case and the legal position as discussed at paras 6 & 7 above, it is therefore not considered essential and necessary to dwell into nuances of the 'manufacture aspect' as pleaded in detail by both the appellants and respondents and there seems to be no infirmity in the order of Commissioner (Appeals) in confirming the Order-in-Originals and rejecting the Appeal."

7. Rule 18 of Central Excise Rules, 2002 provides where any goods exported, the Central Government may, by notification, grant rebate of duty paid on such exciseable goods or duty paid on materials used in the manufacture or processing of such goods. There is no dispute that, in the present case, rebate was sanctioned on the exported goods, Menthol powder. In this situation, the denial of credit on Menthol flake used in the process of

Menthol powder is not justified. The Tribunal in the case of Vinayak Industries vs. CCE, Rajkot [2009 (159) ELT 456 (Tri-Mum)] held that assessee seek credit of duty but Department denying the same on the ground of impugned process did not amount to manufacture is not sustainable. The relevant portion of the said decision is reproduced below:

> "4. In the present appeal also the contention of the revenue is that the processes carried out by the appellants do not result in manufacture of goods. If that be the case, there would be no case for payment of duty on flywheels by the appellants either. That renders the whole dispute academic as there would be no requirement to pay duty and occasion to take Modvat credit. The credit taken would also be a dead entry incapable of being used for any purpose. The reversal of such an entry is also an idle formality. In these circumstances, the Commissioner (Appeals) was right in setting credit taken or adjusting the same towards the payment of duty. The appellant assessee is not claiming any refund of the duty paid inasmuch as he is of the view that the process carried out by him amounted to manufacture. In these circumstances, the credit taken and the duty are best left undisturbed. The Commissioner's direction for keeping accounts in terms of Rule 173H for further receipts of flywheels may be observed by the appellant assessee so that future disputes are avoided. The appeals are disposed of in the above terms."

8. In view of the above discussions, we find that rebate was granted on duty paid on Menthol powder and therefore, credit cannot be denied on Menthol flakes used in the processing of such goods. It is noted that Revisionary Authority, Govt. of India accepted sanctioning of rebate of duty of final product and the issue as to whether the process undertaken by the appellant amounts to manufacture is not relevant in the present case. Accordingly, the impugned order is not sustainable and it is set aside. The

appeals filed by the appellant are allowed with consequential relief. The appeal by the Revenue is rejected.

(Pronounced in the open Court on 27/8/98)

(M. Veeraiyan)
Member(Technical)

(P.K.Das)
Member(Judicial)

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