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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/3654/2004 - EX[DB] Date 17/12/2008

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

To :
M/S BHILWARA MELBA DE WITTE LTD.
M/S BHILWARA MELBA DE WITTE LTD., P.B. NO. 35,
MORDI, BANSWARA (RAJASTHAN)
M/S BHILWARA MELBA DE WITTE LTD. Appellant
Vs
C.C.E. JAIPUR-II Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 936/08-**EX[DB]** dated 12-12-08 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-II
THE COMMISSIONER OF CENTRAL EXCISE, JAIPUR, NCRB, STATUE CIRCLE, C-SCHEME, JAIPUR.
2. Adv. / Consult MS. ASMITA NAYAK, ADV.,
49, SHASTRI MARG, UDAIPUR-313001

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 - 3
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
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-1
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. 3654 of 2004

[Arising out of Order-in-Appeal No. 39(RM)/CE/JPR-II/2004 dated 20.1.2004 passed by Commissioner (Appeals II) Central Excise, Jaipur.]

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? : NO

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

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M/s. Bhilwara Melba de WITTE Ltd. — Appellants

Vs.

Commissioner of Customs Central Excise Jaipur II — Respondent

Appearance:

Ms. Asmita Nayak, Advocate for the Appellant
Mr. Amit Jain, DR for the Respondent

CORAM:

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

Date of Hearing /Decision: 12.12.2008

FINAL **ORDER NO. 936/08-EX**

Per M. Veeraiyan (for the Bench):

1. This is appeal against the order of the Commissioner (Appeals) No. 39(RM)/CE/JPR-II/2004 dated 20.10.04.

2. Heard both sides.

3. The appellant procured duty paid POY from the market and took credit of the duty paid and texturised the same. The original authority held that the appellant is not an independent texturiser in terms of Rule 57AB (2)(c) of Central Excise Rules, 1944 and, therefore, he disallowed the credit taken and consequently ordered recovery of credit to the tune of Rs.1,46,094/-. On appeal, Commissioner (Appeals) upheld the order of the original authority.

4. On behalf of the appellant, it was submitted that conclusion that they are not independent texturiser is not correct. Even if they are held to be not independent texturisor, the duty demand can not survive as they are eligible for benefit of exemption notification No.6/2000 dated 1.3.2000. If the view of the Department is upheld, they were required to pay Rs.20.22 per Kg. if the benefit of the Notification claimed by them was extended to them. As against the same they have paid a sum of Rs. 32/- per Kg. Therefore, the demand should not be upheld.

5. Learned DR submits that the definition of independent texturisor is clearly incorporated in Rule 57AB(2)(c) itself and there is no scope for interpreting the said Rule with the aid of Notification No. 6/2000-CE dated 1.3.2000. In this context, he relied on the decision of Hon'ble Supreme

Court in the case of CCE, Trichy vs. Rukmani Pakkwell Traders reported in 2004 (165) ELT 481 (SC). He also submits that the duty paid by the appellant might have been taken as Cenvat credit by the recipient of texturised yarn i.e. manufacturer of fabrics. He also submits that if the appellant was entitled to refund, they were free to claim refund as permissible under the law as held by the original authority.

6.1. We have carefully considered the submissions from both the sides. We agree with the Ld DR that the appellant has not claimed the benefit of Notification No.6/2000 at the time of clearance of the texturised yarn. We do not agree that it is merely a case of reversal of the wrongly taken credit. From the reading of the order, it is clear that credit taken has been utilised and the order refers to disallowance and recovery of the credit so taken and utilised. Therefore, there is clearly a demand of duty from the appellant. While contesting the demand of duty, the appellant is definitely entitled to raise issues which have a bearing on the proposed demand; the defence can be that goods are not subjected to duty at all or that they are eligible for benefit of some exemption notification. Such defence to seek setting aside the demand proposed is permissible and requires to be considered. In this context only, the issue of eligibility of benefit of notification has been raised by the appellant. It is required to be considered as to whether they were eligible for the exemption claimed. If the exemption is held eligible, then by taking the disputed credit, they have paid the duty in excess of what they were required to pay and such a situation we do not find any justification in sustaining the demand.

6.2. However, this claim for exemption has to be considered after verification of relevant facts. This issue has not been specifically dealt with by the authorities below. To enable the same, we set aside the orders of the authorities below and remand the matter to the original authority to decide the above issue afresh after giving reasonable opportunity of hearing to the appellant.

7. Appeal is allowed by way of remand.

(Dictated & Pronounced in the open Court)

(M. Veeraiyan)
Member(Technical)

(P.K.Das)
Member(Judicial)

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