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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/3438/2004 - EX[DB]   Date 24/10/2008

Assistant Registrar
CESTAT, New Delhi

To :
SWADESHI KOREATEX
SWADESHI KORETEX, VILLAGE VALLAH, VERKA
BY-PASS ROAD, AMRITSAR.
SWADESHI KOREATEX   Appellant
Vs
C.C.E JALLANDHAR   Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 826/08- EX[DB] dated 26-8-08

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 JALLANDHAR
C.C.E JALLANDHAR (HQ AT CHANDIGARH), PLOT NO 19, SECTOR 17-C, CHANDIGARH.
2. Adv. / Consult SH. R.L. MEHRA & CO.
M.M. MALVIYA ROAD,
AMRITSAR (PB)
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 - 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 & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI

COURT - II

EXCISE APPEAL NO. 3438 OF 2004

[Arising out of Order-in-Appeal No. 174-179/CE/APPL/JAL/2003 dated 26.03.2004 passed by the Commissioner (Appeals), Customs & Central Excise, Chandigarh]

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?	
2.	Whether it would 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. Swadeshi Koreatax — Appellants

Vs.

CCE, Jallandhar — Respondent

Appearance:

Shri R.L. Mehra, C.A. for the appellants;
Shri S.N. Srivastava, Departmental Representative, for the Revenue;

Coram:

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

Date of Hearing: 26th August, 2008

FINAL ORDER NO. 826/08-SM **dated** ________

Per S.S. Kang:

Heard both sides.

2. The appellants filed this appeal against Order-in-Appeal whereby refund claim of the appellants was rejected on the ground that the credit of duty paid in respect of inputs i.e. yarn which is used in the manufacture of blanket and carpet some of which were exported is not admissible.

3. Contention of the appellants is that the Board issued a circular dated 9.2.2004 clarifying that refund is admissible when the finished goods were exported under scheme of bond and this circular is not taken into consideration while passing the order. Contention is also that they are entitled for refund of duty paid on inputs which they are unable to utilize in respect of exported goods or cleared for home consumption. Learned SDR submitted that as per Rule 5 of CENVAT Credit Rules 2002 refund of CENVAT Credit is admissible only in respect of inputs used for the manufacture of exported goods. Regarding refund of CENVAT Credit which the manufacturer unable to utilize in respect of goods cleared for home consumption, there is no provision for refund. Contention is that Board's Circular dated 9.2.2004 is not relied upon by

the appellant before the lower authorities, therefore, order was rightly passed.

4. We find that the appellants filed refund claim for refund of CENVAT Credit under Rule 5 of CENVAT Credit Rules. For ready reference Rule 5 is reproduced below:-

"RULE 5. Refund of CENVAT credit. – Where any inputs are used in the final products which are cleared for export under bond or letter of undertaking, as the case may be, or used in the intermediate products cleared for export, the CENVAT credit in respect of the inputs so used shall be allowed to be utilized by the manufacturer towards payment of duty of excise on any final products cleared for home consumption or for export on payment of duty and where for any reason such adjustment is not possible, the manufactuerer shall be allowed refund of such amount subject to such safeguards, conditions and limitations as may be specified by the Central Government by notification:"

Reading of Rule 5 provides that where any inputs s are used in the final products which are cleared for export under bond or letter of export, the CENVAT credit in respect of the inputs so used shall be allowed to be utilized towards payment of excise duty on any final products cleared for home consumption or for export on payment of duty and where for any reason such adjustment is not possible, the manufacturer shall be allowed refund of such amount subject to such safeguards, conditions and limitations as may be specified.

5. The lower authorities rejected the refund claim without taking into consideration Board's circular dated 9.2.2004 wherein clarification has been issued in respect of un-utilized credit in case finished goods were exported. In these circumstances impugned order is set aside and matter is remanded to the lower authority to decide the same afresh keeping in view Rule 5 of CENVAT Credit Rules.

(Dictated & pronounced in the Open Court.)

(S.S. KANG)
VICE PRESIDENT

(RAKESH KUMAR)
MEMBER (TECHNICAL)

Dt 26.8.08
~~Dated 28th August, 2008-08-26~~
RK