TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

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

Appeal No. E/4398/2004,4912/2004 - EX[DB] Date 04/02/2009

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

To :
M/S RLF LTD.
14TH K/M GURGAON PATAUDI ROAD, VILLAGE
JHUND SARAI VEERAN, DISTT GURGAON
(HARYANA)

M/S RLF LTD. Appellant

Vs

C.C.E. GURGAON Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 91-92/209- **EX[DB]** dated 02-2-09

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.BIPIN GARG~~
   ~~B-1/1289,A-VASANT KUNJ, NEW DELHI~~
   SH. VIPIN BALI, LA
   D-41, SOUTH EXTENSION,
   PART-II, N. DELHI
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-15
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 – 110 066.

COURT NO. II
Excise Appeal Nos. 4398 and 4912 of 2004

[Arising out of the Order-in-Appeal No. 221/AKG/GGN/2004 dated 14/06/2004 passed by The Commissioner (Appeals), Central Excise, Delhi – III, Gurgaon.]

For Approval and signature :
Hon'ble Shri D.N. Panda, Judicial Member
Hon'ble Shri Rakesh Kumar, Technical Member

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 Department Authorities?	:

M/s RLF India Ltd. Appellant

Versus

CCE, Delhi – III Respondent

Vice - Versa

Appearance

Shri Vipin Bali, C.A. – for the appellant.

Shri V. Choudhary, Authorized Representative (DR) – for the Respondent.

CORAM:**Hon'ble Shri D.N. Panda, Judicial Member**
Hon'ble Sh. Rakesh Kumar, Technical Member

DATE OF HEARING : 22/01/2009.

FINAL Order No. 91-92/09-EX Dated : ____________

Per. Rakesh Kumar :-

Since both these appeals have been filed against the same order-in-appeal No. 221/AKG/GGN/04 dated 14/06/04 passed by CCE (Appeals), Delhi – III, Gurgaon, the same are being disposed of by a common order. The appeal No. E/4412/04 has been filed by M/s RLF India Limited, Gurgaon [hereinafter referred to as the Appellant] and the other appeal No. E/4398/04 has been filed by Commissioner of Central Excise, Delhi – III (hereinafter referred to as the Respondent).

1.1 The facts giving rise to filing of these appeals are, in brief, as under :-

> The Appellant are manufacturers of embroidery fabrics chargeable to Central Excise Duty under heading No. 5805.19 of the Tariff. The Appellant were availing of

the compounded scheme for payment of duty on embroidery fabrics manufactured by them as prescribed under Section E-IX of Chapter V of the Central Excise Rules, 1944 (Rules 96 ZH to 96 ZM). The Appellant received some duty paid capital goods in their factory during April – May 1998 period and took capital goods Cenvat credit of Rs. 40,16,000/- in respect of the same under the provisions of the then Rule 57Q. During the period from September 1998 to February 1999, duty amounting to Rs. 16,56,000/- was paid by utilizing the above-mentioned credit. On 02/6/98 Notification No. 15/98-CE (NT) was issued introducing Second Proviso to Rule 96 ZI providing that no credit of duty paid on inputs and capital goods used in the manufacture of embroidery shall be allowed under Rule 57A/57B and 57Q, as the case may be. Department was of the view that [illegible], in view of the provisions of Sub-rule 3 of Rule 96ZI providing that the duty liability determined by the Commissioner shall be paid by the manufacturer by debit amount in the current account maintained under Rule 96Z and also in view of the provisions of Rule 96Z providing that the credit in the current account can be taken only by cash payment into the treasury, the Appellant even prior to 02/6/98 could neither avail capital goods/input duty Cenvat credit nor could they utilized such credit for payment of duty of finished goods. It is on this basis i.e. Jurisdictional Deputy Commissioner vide Order-in-Original No.

214/CE/99 dated 23/07/01 confirmed the duty demand of Rs. 16,56,964/- under the provisions of Section 11 A (1) readwith Rule 96 ZL of the Central Excise Rules and imposed penalty of equal amount under Rule 96ZL readwith Rule 209 ibid. On appeal against this order, the Commissioner (Appeal) vide the impugned order-in-appeal dated 14/06/04 upheld the duty demand but reduced the penalty to Rs. 2,000/- on the ground that the violation of the provisions of Rule 96 ZH to 96 ZK are punishable only under Rule 96 ZL under which the maximum penalty imposable is Rs. 2,000/-. While, the Appellant have challenged this order of Commissioner (Appeal) with regard to upholding of the duty demand, the Respondent have challenged the impugned order reducing the penalty to Rs. 2,000/-.

2. Heard both the sides.

2.1 Shri Vipin Bali, C.A., the learned Counsel for the Appellant made had written as well as oral arguments, wherein it was pleaded that the specific provision debarring the manufacturers of embroidery operating under compounded levy scheme prescribed under Rule 96 ZH to Rule 96 ZM from availing Cenvat credit facility was introduced w.e.f. 02/6/98 by issue of Notification No. 15/98-

CE (NT) and, therefore, prior to 02/6/98, the Appellant were eligible for input duty as well as capital goods Cenvat credit and the capital goods Cenvat credit taken by them prior to 02/6/98 has been correctly utilized by them for payment of duty during September 98 – February 99 period, that the Commissioner (Appeal) as well as the original adjudicating authority have failed to take into account the mandatory provisions of Section 38A of Central Excise Act, according to which, where any Rule, notification or order made or issued under Central Excise Act or any notification or order issued under such Rule, is amended, repealed, superseded or rescinded, then, unless a different intention appears, such amendment, repeal, super-session or rescinding shall not affect any right, privilege, obligation or liability acquired, accrued or incurred any Rule, Notification or order so amended repeal superseded or rescinded, that in view of these provisions of Section 38A, the Appellant had rightly utilized the capital goods Cenvat credit taken by them during April – May 1998 period for discharging duty liability during September 1998 to February 1999 period, that the show cause notice dated 08/3/99 in respect of credit taken on 21/4/98 and

27/5/98 is time barred and that in any case when Rule 96ZL provides an upper limit of Rs. 2,000/- for imposition of penalty, penalty more than this amount cannot be imposed.

2.2 The learned Departmental Representative pleaded that the amendment made to Rule 96 ZI vide Notification No. 15/98-CE (NT) is of clarificatory nature, that from the provisions of sub-rule 3 of Rule 96ZI readwith Rule 96ZJ it is clear that duty liability was to be discharged by the Appellant in cash i.e. by debit in the current account being maintained by them in which credit could be taken by them only by cash deposit in the Government treasury, that on this very issue, the Tribunal in the case of **United Leasing and Industries Ltd. vs. CCE, Delhi – III** reported in **2002 (139) E.L.T. 565 (Tribunal)** and also in the case of **Saurer Embroidery Systems (I) Pvt. Ltd. vs. CCE, Gurgaon** reported in **2007 (208) E.L.T. 568 (Tri. – Del.)** has held that from a perusal of Rule 96 ZI and 96 ZJ it is clear that even during the period prior to 02/6/98, a manufacturer of embroidery operating under compounded levy scheme was not entitled to avail Modvat credit on inputs and capital goods and the Second

Proviso to Rule 96 ZI (1) is of clarificatory nature and that while the Commissioner (Appeal) has rightly upheld the duty demand the order reducing the penalty to Rs. 2,000/- is not correct as the penalty upto Rs. 2,000/- prescribed under Rule 96 ZL is for contravention of provisions of Rule 96 ZJ or omission to furnishing correct information required by sub-rule 5 of Rule 96 ZI or sub-rule 2 Rule 96 ZJ and that for the Appellant's offence of clearing goods by availing Modvat credit for which they were not eligible, the Deputy Commissioner has rightly imposed penalty under Rule 209 of the Central Excise Rules.

3. We have carefully considered the submissions from both the sides. As regards, the first issue regarding eligibility of Appellant for Cenvat credit, this issue stands decided against them by the judgments of the Tribunal in the cases of United Leasing and Industries Ltd. vs. CCE, Delhi – III (supra) and M/s Saurer Embroidery Systems (I) Pvt. Ltd. vs. CCE, Gurgaon (supra). We, therefore, hold that since the Appellant had opted for compounded levy scheme under Rule 96 ZH to 96 ZM of Central Excise Rules, they could not avail

input duty or capital goods Cenvat credit and, therefore, utilization of such Cenvat credit to which they were not entitled to the extent of Rs. 16,56,000/- for discharging duty liability during September 1998 to February 1999 period is incorrect and, therefore, this duty would be recoverable from them. Since the show cause notice for demanding this duty has been issued on 08/3/99, the same is within time. In view of this, we find no infirmity in the impugned order upholding the confirmation of the duty demand.

4. As regards, the imposition of penalty on the Appellant, since Rule 96 ZH to Rule 96 ZM in Section E-IX of Chapter V of the Central Excise Rules are a self contained code "regarding compounded levy scheme for manufacturers of embroidery and since the maximum penalty prescribed under Rule 96 ZL for violation of the provisions is Rs. 2,000/-, we are of the view that the Commissioner (Appeal) has rightly restricted the same to Rs. 2,000/- and as such there is no infirmity in the impugned order on this account also.

5. In view of the above discussion, the impugned order is upheld and the appeals filed by the Appellant as well as by the Revenue are dismissed.

(Operative part of the order pronounced in the open court.)

(D.N. Panda)
Judicial Member

(Rakesh Kumar)
Technical Member

PK