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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/5498/2004 - EX[DB] Date 26/02/2009

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

To :
C.C.E.INDORE M.P
4,INDRALOK COLONY KESAR BAGH ROAD, INDORE
M.P
C.C.E.INDORE M.P Appellant

Vs

M/S ARYA FILMENTS,PVT.LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 174/2009- **EX[DB]** dated 20-2-09

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

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
   M/S ARYA FILMENTS PVT.LTD.
   PLOT NO.20 SEC-I,PITHAMPUR M.P
2. Adv. / Consult

NONE

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 AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. III

Excise Appeal No. 5498 of 2004

[Arising out of Order-in-Appeal No. IND-I/331/04 dated 11.8.2004 passed by Commissioner (Appeal I) Customs & Central Excise, Indore.]

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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Commissioner of Central Excise Indore — Appellant

Vs.

M/s. Arya Filaments Pvt. Ltd. — Respondent

Appearance:

Mr. C.S. Rajput, DR for the Appellant
None for the Respondent

CORAM:

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

Date of Hearing/Decision: 20.2.2009

FINAL ORDER NO. 174/09-EX

Per M. Veeraiyan (for the Bench):

1. This is an appeal filed by the Department against the order of the Commissioner (Appeals) No. IND-I/331/04 dated 11.8.2004.

2. None appeared for the respondents. Heard the learned DR.

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

1) The respondent is procuring inputs like tungsten wire, Molywire, graphite, ammonia gas, nitrogen gas etc. They manufacture intermediate products like filaments which are cleared captively for manufacture of bulbs. The vacuum bulbs are eligible for concessional rate of duty under Notification No. 10/2002 dated 1.3.2002, *inter alia*, subject to the condition that no credit of duty paid on inputs used in the manufacture of goods was taken under Rule 3 or Rule 11 of CENVAT Credit Rules, 2002. The original authority held that inasmuch as credit has been taken on the inputs like tungsten wire, Molywire etc., the assessee is not eligible for concessional rate of duty for the bulbs. Commissioner (Appeals) has held that the Cenvat Credit has been taken only in respect of inputs used in the manufacture of wire and filaments which are intermediate products and they were cleared for captive consumption. Since the intermediate products were exempted,

they have paid an amount of 8% of the value of such wires and filaments for having not maintained separate accounts for the inputs used in such exempted products. He has also held that the assessee has not taken any credit on Nitrogen gas which is used for filling the bulbs. Accordingly, he allowed the appeal.

4. Learned DR submits that the filaments are intermediate products and they are being captively consumed and not cleared outside the factory and that they are not cleared on sale. In the present case, the final product is only bulbs which are cleared on sale. He seeks setting aside the order of the Commissioner (Appeals) and restoring the order of the original authority.

5.1 We have carefully considering the submissions. The Commissioner has allowed the appeal of the party with the following findings:

> "5. The appeal is being taken up for final disposal after dispensing with pre-deposit of duty and penalty. On careful consideration of the written and oral submissions made by the Appellants, I find that the Appellants had taken Modvat only in respect of inputs used in the manufacture of the wires and filaments and that they had not been taken any credit on nitrogen gas which is used in both the section namely filaments/ wire and bulb section. However, the Appellants have stated that when the filaments were cleared captively for the manufacture of bulbs, they had availed exemption under Notification No. 10/96 dated 23.07.1996. I find that this Notification, provides full exemption to certain products which are used captively in the factory of production and in my view the exemption availed by the Appellants is perfectly in order. Since the goods are cleared for captively consumption they have not paid any duty. In view of the fact that they had maintained a single account of credit in respect of

inputs used in the manufacture of wires/ filaments, they had paid 8% of the amount of such filaments cleared for captive consumption. In this situation it can not be alleged that the Appellants had taken credit on inputs used in the manufacture of bulbs. As already mentioned above when the filaments were cleared for captive use, 8% of the amount was paid on the value of such filaments to take care of the provision of the Cenvat Credit Rules. As far as nitrogen gas and other inputs used in the manufacture of bulbs, no credit has been taken by the Appellants. Accordingly, concessional rate of 8% of duty paid (in PLA) by the Appellants on clearance of bulbs in terms of Notification No. 10/2002 dated 1.3.2002 is also in order in as much as no credit has been availed on the inputs used in the manufacture of bulbs. Further as pointed out by the Appellants, the Assistant Commissioner of Pithampur Division vide Order-in-Original No. 341/2003 dated 29.12.2003 has dropped the proceedings initiated against them for a later period and he has relied upon a decision of the Tribunal in the case of CCE, Jaipur vs. Rayban Sun Optics (I) Ltd., reported in 2003 (56) RLT 518. In view of this position I have no hesitation in holding that the demand made in the impugned order is not sustainable and accordingly, I set aside the same, as well as the penalty imposed on the Appellants.

5.2 We find that the Commissioner has correctly held that filaments, which are intermediate products are cleared for use in the manufacture of bulbs. It is not denied that the filaments are excisable but are exempted. As the filaments, as intermediate product are exempted, the assessee has debited 8% of the value of filament in as much as they have taken Cenvat credit on common inputs but have not maintained separate accounts. He has also held that they have not taken credit on other inputs used in the bulbs. Therefore, his finding that no credit on duty paid on any input has been taken as credit in relation to bulbs manufactured is legally correct. It cannot be held that the intermediate products are not excisable goods and that they are not exempted. Since the filament and gas are inputs for bulbs and no credit of duty paid on these goods has been taken, the condition of notification has been fulfilled. Therefore, we do not find any reason to interfere with the order of the Commissioner (Appeals).

6. The appeal is rejected.

(Dictated & Pronounced in the open Court)

(M. Veeraiyan)
Member(Technical)

(P.K.Das)
Member(Judicial)

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