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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/5306/2004 - EX[DB] Date 26/06/2009

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

To :
M/S DELITE PROCESSORS
G-24,SECTOR-XI NOIDA U.P

M/S DELITE PROCESSORS Appellant
Vs
C.C.E.NOIDA Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 423/2009- **EX[DB]** dated 5-5-09 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.NOIDA
OFFICE OF COMMISSIONER OF CUSTOMS,CENTRAL EXCISE AND SERVICE TAX, C-56/42, SECTOR-62, NOIDA - 201307
2. Adv. / Consult SH. ATUL GUPTA, B-1/1289-A, VASANTKUNJ, N. DELHI-70
3 C.D.R
~~4 J.C.D.R.~~
5 Bar association, CESTAT, New Delhi
6 Director Publications, Customs, Excise, I.P. Estate, New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
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14 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
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Assistant Registrar
(Excise Appeal Branch)

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

Excise Appeal No. 5306 /2004- Ex(BR)

[Arising out of Order-in-Appeal No. 284/CE/APPL/NOIDA/2004 dated 16.9.2004 passed by Commissioner of Customs & Central Excise (Appeals), NOIDA (UP).]

For approval and signature:

Hon'ble Mr. Justice R.M.S. Khandeparkar, President
Hon'ble Mr. M. Veeraiyan, 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?	:	Yes
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

M/s. Delite Processors — Appellant

Vs.

Commissioner of Central Excise NOIDA — Respondent

Appearance:

Mr. Atul Gupta, Company Secretary for the Appellant
Mr. S.N. Srivastava, SDR for the Respondent

CORAM:
Hon'ble Mr. Justice R.M.S. Khandeparkar, President
Hon'ble Mr. M. Veeraiyan, Member (Technical)

Date of Hearing/decision : 5.5.2009

Final **ORAL ORDER NO. 423/09 – SA**

Per Mr. M. Veeraiyan (for the Bench):

This is an appeal against the order of Commissioner (Appeals) dated 16.9.2004.

2. Heard both sides.

3. The appellant is an independent processor. They received grey cotton fabrics falling under Chapter 5207 and unprocessed man-made fabrics and processed the same and cleared the processed fabrics on payment of excise duty. They availed the benefit of Notification No.6/02-CE dated 1.3.02 and took deemed credit while paying the duty on the finished processed fabrics cleared by them.

4. The original authority held that the grey cotton fabrics and unprocessed man-made fabrics have not been specifically listed as inputs under column 2 of the said Notification and therefore, while clearing the final products i.e. processed cotton fabrics and man-made fabrics, the appellant was not eligible for deemed credit, accordingly, confirmed the demand of duty of Rs.9,27,509/- along with interest and imposed equal penalty. The Commissioner (Appeals) upheld the order of the original authority.

5.1 Learned Company Secretary appearing for the appellant submits that the yarn used by the manufacturer of grey fabrics are duty paid; the duty paid yarn is very much contained in the processed fabrics; the deemed credit provided in respect of processed fabrics takes into account the duty paid at yarn stage and also the duty paid on dyes and chemicals, consumables and packing materials used in the final products He submits that no one to one co-relation is envisaged in respect of inputs mentioned in Column 2 with corresponding finished products mentioned in column 3. He also draws our attention to the explanation No. 3 under clause (6) which clarifies that notification shall not apply where processed fabrics itself is used as an input for further processing and thereby imply that the notification envisages extending deemed credit even when the grey fabrics is used for further processing. He also submits that amendment by Notification No.16/2002 CE(NT) dated 27.4.02 by inserting new proviso to the explanation also supports his contention.

5.2 He relies on clarification of the Board No. 702/18/2003 CX dated 13.3.2003 where in similar situation dealing with Notification No. 20/96 CE(NT) dated 3.6.96, it was clarified that "although grey fabrics are not included as the declared inputs under the said Notification, these are made out of duty paid yarn/ fibres which are declared inputs and have suffered appropriate excise duty". As the present Notification is substantially on the same lines as notification 29/96 CE(NT) dated 3.9.96, the use of yarn through grey fabrics in the final product namely, processed fabrics should be taken note of and deemed credit should be extended.

5.3 He also relies on the decision of the Tribunal in the case of Damini Printers (P) Ltd. vs. CCE, Noida reported in [2005 (191) ELT 653 (Tri-

Del)]; CCE, Ahmedabad vs. Sujuki Synthetics reported in 2008 (222) ELT 279 (Tri-Ahmd); Dean Calenders vs. CCE, Ahmedabad I reported in 2007 (220) ELT 283 (Tri-Ahmd); and CCE, Jaipur II vs. M/s. Bohra Synthetics P. Ltd. reported in 2008 (230) ELT 533 (Tri-Del).

6. Learned DR submits that the Board's clarification of 2003 refers to processed yarn to the extent that yarn/fibres has paid duty. However, certain categories of cotton yarn like those supplied to the co-operative societies or yarn supplied in straight-reel hangs were exempted and, therefore, no such presumption is justified regarding the duty paid nature of the yarn. He also submits that as the inputs have not been mentioned in column 2 of the said Notification, therefore, he seeks upholding of the order of Commissioner (Appeals). He also submits that grey cotton fabrics have always been exempted during the relevant period.

7.1 We have carefully considered the submissions from both the sides. Notification No. 6/2002 CE(NT) has been issued under Rule 11 prescribing the deemed credit. This is a departure from the normal scheme of Modvat credit by which actual duty paid on the inputs are made available as the credit based on the duty paying documents.

7.2 The relevant portion of the notification is reproduced below:

"In exercise of the powers conferred by rule 11 of the CENVAT Credit Rules, 2002, and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 53/2001-Central Excise (N.T.), dated the 29th June, 2001, published in the Gazette of India vide number G.S.R. 497(E), dated the 29th June, 2001, except as respects things done or omitted to have been done before such supersession, the Central Government, hereby declares the following inputs (hereinafter referred to as the "declared inputs") and final products falling within the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) (hereinafter referred to as the said First Schedule), as specified in the Table below, namely :-

TABLE

S.No.	Inputs	Final products
(1)	(2)	(3)
(1)	Goods falling within heading No. 51.05, 51.06, 51.07, 52.05, 52.06, 53.06, 53.07, 53.08, 54.02, 54.03, 54.04, 54.05, 55.01, 55.02, 55.03, 55.04, 55.05, 55.06, 55.07, 55.09, 55.10, 56.04, 56.05 or 56.06 of the said First Schedule.	The following goods manufactured by a composite mill, namely :- (i) Processed fabrics falling under Chapters 52 (except sub-heading Nos. 5207.20, 5208.20 and 5209.10), 54 (except sub-heading Nos. 5406.10 and 5407.10), 55 (except sub-heading Nos. 5511.10, 5512.10, 5513.10 and 5514.10), 60.01 or 60.02 (except sub-heading No. 6002.10); or (ii) Fabrics of cotton or man-made fibres, whether or not processed, falling under heading Nos. 58.01, 58.02 or 58.06 (except sub-heading No. 5806.20) of the said First Schedule.
(2)	(i) Goods falling within heading No. 51.05, 51.06, 51.07, 52.05, 52.06, 53.06, 53.07, 53.08, 54.02, 54.03, 54.04, 54.05, 55.01, 55.02, 55.03, 55.04, 55.05, 55.06, 55.07, 55.09, 55.10, 56.04, 56.05 or 56.06 of the said First Schedule; (ii) Dyes, chemicals, consumables, packaging materials falling within the said First Schedule.	The following goods manufactured by a manufacturer other than a composite mill, namely :- (i) Processed fabrics falling under Chapters 52 (except sub-heading Nos. 5207.20, 5208.20 and 5209.10), 54 (except sub-heading Nos. 5406.10 and 5407.10), 55 (except sub-heading Nos. 5511.10, 5512.10, 5513.10 and 5514.10) or 60.01, 60.02 (except sub-heading No. 6002.10); or (ii) Fabrics of cotton or man-made fibres, whether or not processed, falling under heading Nos. 58.01, 58.02 or 58.06 (except sub-heading No. 5806.20), of the said First Schedule.
(3)	Goods falling within heading No. 52.05 or 52.06 of the said First Schedule	The following goods manufactured by a manufacturer other than a composite mill, namely :- (a) Gauze falling under heading No. 58.03 of the said First Schedule; (b) Book binding cloth falling under sub-heading No. 5901.10 of the said First Schedule.

2. The Central Government further declares that, -

(i) the duty of excise under the Central Excise Act, 1944 (1 of 1944);

(ii) the additional duty under section 3 of the Customs Tariff Act, 1975 (51 of 1975); or

(iii) the additional duty of excise under section 3 of the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 (40 of 1978),

(hereinafter referred to as the declared duty) shall be deemed to have been paid on the declared inputs and the same,-

(i) in case of a composite mill, shall be equivalent to the amount calculated at the rate of, –

(a) 26 per cent. of the aggregate of the duty of excise leviable under the Central Excise Act, 1944 and the additional duty of excise leviable under the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957) read with any notification for the time being in force, on the final products of cotton (not containing any other textile material) declared herein;

(b) 60 per cent. of the aggregate of the duty of excise leviable under the Central Excise Act, 1944 and the additional duty of excise leviable under the Additional Duties of Excise (Goods of Special Importance) Act, 1957 read with any notification for the time being in force, on the final products other than those specified in sub-clause (a),

(ii) in case of a manufacturer other than a composite mill, shall be equivalent to the amount calculated at the rate of, –

(a) $33^1/_3$ per cent. of the aggregate of the duty of excise leviable under the Central Excise Act, 1944 and the additional duty of excise leviable under the Additional Duties of Excise (Goods of Special Importance) Act, 1957 read with any notification for the time being in force, on the final products of cotton (not containing any other textile material) declared herein;

(b) $66^2/_3$ per cent. of the aggregate of the duty of excise leviable under the Central Excise Act, 1944 and the additional duty of excise leviable under the Additional Duties of Excise (Goods of Special Importance) Act, 1957 read with any notification for the time being in force, on the final products other than those specified in sub-clause (a),

and credit of the declared duty so deemed to have been paid shall be allowed to the manufacturer of the final products, without production of documents evidencing payment of duty on the declared inputs, at the time of clearance of the said final products.

6. The provisions of this notification shall not apply to final products on which duty of excise leviable under the Central Excise Act, 1944, or as the case may be, the additional duty leviable under the Additional Duties of Excise (Goods of Special Importance) Act, 1957, has not been levied or paid or has been short-levied or short paid or erroneously refunded by reason of fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any provisions of the Central Excise Act or of the rules made thereunder with intent to evade payment of duty.

Explanation 1.- ....

Explanation 2. – ....

Explanation 3. - For the removal of doubt it is clarified that the provisions of this notification shall not apply where processed fabric itself is used as an input for further processing.

Explanation 4. - For the removal of doubt it is clarified that the provisions of paragraph 4 shall not apply to a manufacturer who avails of any credit, under rule 3 of the CENVAT Credit Rules, 2002, in respect of the declared inputs where the said declared inputs are used in manufacture of final products other than the said final products."

7.3 A careful reading of the notification reveal that it does not provide for one to one correlation of inputs mentioned in column 2 and with finished products mentioned in column 3. It also mentions the dyes, chemicals, consumables, packing materials as inputs generally in respect of S.No.2. The wording of explanation 3 appearing in clause (6) gives an indication that grey fabrics used for processing and the fabrics may be covered by the deemed credit provided under the said Notification. It is not disputed that the yarn/fabrics is contained in the processed fabrics. It is true that they are not directly used in the processed fabrics but in the grey fabrics or unprocessed fabrics. The Board's clarification dated 13.3.2003 dealing with substantially similar notification has acknowledged the fact that grey fabrics though not subjected to duty were made out of duty paid yarn and fibres and eligible for the concession. The exemption for yarn as pointed out by the learned DR was admittedly in force during the period of currency of the Notification 29/96.

7.4 Further, the Tribunal in the case of M/s. Damini Printers (P) Ltd. dealing with the same Notification has held that credit is available in respect of processed fabrics processed by independent processors from grey fabrics. The relevant portion of the said decision is reproduced below:-

> **5.** We have considered the submissions of both the sides. Rule 11 of the Cenvat Credit Rules, 2002 empowers the Central Government to declare the inputs on which the duty of excise or additional duty of Customs shall be deemed to have been paid at such rate as may be specified in the Notification and to allow Cenvat credit of such duty deemed to have been paid even if the declared inputs are not used

directly by the manufacturer of final products declared in the Notification but are contained in the final products. In exercise of the powers conferred by said Rule 11, the Central Government has issued Notification No. 6/2002 (NT) specifying the inputs, and final products for the purpose of allowing the deemed Cenvat credit. A manufacturer other than a composite Mill is eligible to take the deemed credit in respect of specified processed fabrics. The inputs have been specified in the Notification, Tariff Headingwise and all these Headings pertain to yarn or fibres. In all the Headings mentioned in column meant for inputs refers to fibres. The contention of the Revenue is that as fabrics have not been mentioned in the column of inputs in the table below the Notification, the benefit of deemed credit will not be available to the appellants. The contention of Revenue is not correct as the Notification No. 6/2002 has been issued under Rule 11 of the Cenvat Credit Rules, 2002 which clearly provides that the deemed Modvat credit would be available even if the declared inputs are not used directly by the manufacturer of final products declared in the Notification but are contained in the said final products. It is not in dispute that the fabrics which is processed by the appellants contain yarn which is declared as inputs in the Notification. This view also gets support from the Budget Speech of the Hon'ble Finance Minister, made at the time of presenting the Budget Speech for 1996-97 wherein it was mentioned that the processors would be in a position to Modvat the duty paid on yarn imputed on the basis that yarn accounts for 50% of the value of the finished fabrics. *Finance Minister had adopted a simple procedure of imputed value to avoid the imposition of basic duty on grey fabrics being manufactured by thousands of powerlooms.* The Board has also clarified vide Circular No. 243/77/96-CX., dated 3-9-1996 that the rate of deemed credit in case of fabrics is in lieu of duty paid on inputs by the processors. Para 4.5 of the Circular clearly mentioned that deemed credit is in lieu of duty paid on fabrics, yarns, dyes, chemicals, consumables and packaging materials. By issuing Notification No. 6/2002 the Central Government has only declared the inputs and final products in respect of which the deemed credit would be available. The Notification read with Rule 11 makes it very clear that it is not necessary to declare inputs which are used directly by the manufacturer of the final products. What is required for the purpose of being eligible to get the deemed credit is that declared inputs are contained in the final products. It is not the case of the Revenue that the declared inputs i.e. yarn is not contained in the final products. If the contention of the Revenue is accepted, manufacture other than the composite mill will never be eligible to avail the deemed credit under Notification as they will always be bringing only the fabrics whether cotton or man-made for the purpose of processing and column No. 2 of the Notification does not mention any Heading under which fabrics fall. Further Serial No. 2 as well as Serial No. 3 of the Notification No. 6/2002 will be completely redundant as these Serial Nos. provide the facility of deemed credit to the goods manufactured by a manufacturer other than the composite mill.

6. ....We also observe that this Tribunal has already extended the benefit of Notification No. 29/96 C. E., dated 3-9-1996 in the case of *Mangal Textile Mills India Ltd.* to a manufacturer who processed the grey fabrics relying upon the Boards Circular dated 3-9-1996. Similarly, in the case of *Ashok Silk Mills* (supra), the Tribunal has extended the benefit of deemed credit to an independent processor under Notification No. 7/2001 wherein also the objections raised by the Revenue was that item was not included as an inputs in the Notification. Following these earlier decisions, we hold that the appellants herein are eligible for availing the deemed credit under Notification No. 6/2002. Consequently, both the impugned orders are set aside and all the three appeals are allowed.

8. From the above, it emerges that the deemed credit on processed fabrics was available even though there was no duty on the grey fabrics.

9. In the light of above, we allow the appeal with consequential relief as per law.

(Justice R.M.S. Khandeparkar)
President

(M. Veeraiyah)
Member(Technical)

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