

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

Appeal No. E/66/2006 & E/558/2006 WITH E/CO/177/06

Date 09/09/2009

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

To :
SUPER CASSETTES INDUSTRIES LTD.
PLOT NO-1, FILM CITY, SECTOR-16A, NODIA (UP)
201301
SUPER CASSETTES INDUSTRIES LTD.

CCE, NOIDA.

Appellant

Vs
Respondent

dated 07-9-09

I am directed to transmit herewith a certified copy of Final order No. 633-634/2009-EX

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


Assistant Registrar

Copy to :

1. Respondent

CCE, NOIDA. & VICE-VERSA

B-123, SECTOR-5, NOIDA (UP)

201301

2. Adv. / Consult

MR. V. LAXMIKUMARAN

B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029

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 Publications 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

9 Raghuraman's 44-B, Regal Flat, Shipra Suncity, Indirapuram - 201010, Ghaziabad, DT, U.P.

10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)

11 M/s. Deeparchie Publications, M-93, Marg, 46, Saket, New Delhi 110017

12 Taxindiaonline.com Pvt Ltd, B-XI/8183, Vasant Kuni, New Delhi - 110070

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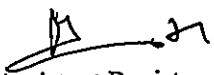
15 LAWCRUX Advisors Pvt Ltd, LAW House, 1-8, Sector - 10, Faridabad 121003 (Harvana)

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18 M/S. SUPER CASSETTES INDUSTRIES LTD.,

C-25, SECTOR-03, NOIDA


Assistant Registrar

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi**

COURT NO. II

DATE OF HEARING : 26/8/09.

Excise Appeal No. 66 of 2006

[Arising out of the Order-in-Appeal No. 106/CE/APPL/NOIDA/
2005 dated 25/10/2005 passed by The Commissioner (Appeals),
Customs & Central Excise, Noida.]

M/s Super Cassettes Industries Ltd.

Appellant

Versus

CCE, Noida

Respondent

Excise Appeal No. 558 of 2006 and C.O. No. 177 of 2006

[Arising out of the Order-in-Appeal No. 106/CE/APPL/NOIDA/
2005 dated 25/10/2005 passed by The Commissioner (Appeals),
Customs & Central Excise, Noida.]

CCE, Noida

Appellant

Versus

M/s Super Cassettes Industries Ltd.

Respondent

Appearance

Shri B.L. Narsimhan, Advocate – for the appellant.

Shri Sansar Chand, Authorized Representative (DR) – for the
Respondent.

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

FINAL Order No. 633-634 / 09-CA Dated : _____

ORDER**Excise Appeal No. 66 of 2006****Per. D.N. Panda :-**

The precise issue involved in this appeal is whether in terms of notification No. 2/2004 dated 8/1/04, came into force w.e.f. 9/1/2004 exempting finished goods from duty, Cenvat credit in respect of Cenvatable input already utilised in terms of Rule 3 (4) of Cenvat Credit Rules, 2004 shall be called back for recovery by Adjudicating Authority, exercising power under Rule 14 of the Cenvat Credit Rules, 2004.

2. Learned Counsel Shri Narsimhan brings out that none of the inputs were questioned to be not Cenvatable. The input that was subject matter of Rule 3 of Cenvat Credit Rules 2004 entitles the appellant to take credit thereof. In terms of Rule 3 (4) of Cenvat Credit Rules, 2004, the appellant has right to utilise the Cenvat credit earned. He therefore submits that when lawful Cenvat credit was earned and such earning, not being questioned, Rule 3 (4) readwith Rule 30 come into play. If applicability of Rule 3 (1) and Rule 3 (4) is not questioned at any point of time, the ground of mere exemption of the final product from Excise, shall not, *if so facto* empower authority to invoke Rule 14 of the Cenvat Credit Rules, 2004 ^{to} : hold that the appellant had either taken Cenvat credit wrongly or utilised the same wrongly since there was no question of charge at all to such extent in the show cause notice. Relying on the Larger Bench decision in the case of **H.M.T. vs. CCE, Panchkula** reported in **2008 (232) E.L.T. 217 (Tri. - LB)**, learned Counsel prays that because finished goods has been exempted in terms of Notification No. 2/2004 dated 8/1/2004, Cenvat credit already utilised cannot be called back by a reversal entry.

Similarly, he submits that the input which has already been converted into work in progress shall also not be subject matter of dispute to call back Cenvat credit element involved in the input therein. So also the Cenvat credit involved in the finished goods lying in the factory for removal on the cut-off date of 08/1/2004 cannot be called back for reversal.

3. Learned DR submits that when the input lying on the cut-off date and not subjected to work-in progress, Cenvat credit element in respect of that input is to be reversible. Balance credit, if any, available on record remaining unutilised is not to be utilised and that is also to be reversed.

4. Heard both sides and perused the record.

5. There is no dispute by both the sides that the input is not Cenvatable. Similarly there is no dispute that part of the input had already gone into work-in progress by 8/1/2004. Also there is no dispute that part of the input were within the finished goods itself on the cut-off date i.e. on 08/01/2004. Notification No. 2/2004 dated 8/1/2004 came into force on 9th January 2004 specifying that the goods of the appellant were exempt from payment of duty. When the notification saw light of the day on 9th January 2004 by that time Cenvat credit earned by the appellant was utilised to discharge duty demand. The credit earned conferred right on the appellant to take the same into account in terms of Rule 3 (4) of Cenvat Credit Rules, 2004. This is undisputed. Even before the effective date of notification, the Cenvat credit earned by the appellant has been utilised in view of the right conferred on the appellant in terms of Rule 3 (4) of Cenvat Credit Rules, 2004.

6. There is no case before us that before the cut-off date, either the Cenvat credit has been taken wrongly or utilised wrongly in violation of Rule 3 (1) and Rule 3 (4) of the Cenvat Credit Rules, 2004. Cenvat credit being earned is allowed under law to be utilised for paying duty according to scheme of the law. Therefore calling back of reversal of lawfully utilised Cenvat credit would be irrational for no allegation of abuse of the scheme. Similarly the input awaiting process of manufacture having earned Cenvat credit for the appellant by lawful invoices issued to him has permitted him to utilise such credit for discharge of duty liability. When mode of utilisation was not questioned and nothing remains on record as to wrong use or misuse of the scheme, calling for reversal of Cenvat credit on the quantum of input physically present on the cut-off date, or such input partly translated into working progress and invisibly present in the finished goods cannot be called to be reversed. Since the right conferred under law having been exercised and denial of such right not being retrospectively affected by specific letters ^{of} law, the proceeding initiated by show cause notice appears to be absurd and shall not get sanction of the law.

7. We make it clear with the aforesaid reasoning that unutilised Cenvat credit existing on record as on 8/1/04 not being meant to be utilised, is never to be utilised during current^y of the notification and the same calls for reversal.

8. Learned counsel relied on the Larger Bench decision of the Tribunal in the case of H.M.T. (supra). Therefore, it was inquired from revenue whether such Larger Bench's decision has been reversed or stayed by any higher court. Revenue has no instruction in this regard today. In view of the mandate of Rule 14 of the Cenvat Credit Rules, 2004, to call back the Cenvat credit without being wrongly taken or

wrongly utilised, adjudication is unsustainable. Accordingly, the impugned order is set aside and the appeal is allowed except to the extent of unutilised Cenvat credit existing on record on 8/1/2004 is to be reversed.

Excise Appeal No. 558 of 2006 and C.O. No. 177 of 2006

In view of aforesaid decision in appeal of the assessee, revenue's appeal is dismissed. Cross objection is also disposed off.

(Dictated and pronounced in open court)

(D.N. Panda)
Judicial Member

(Rakesh Kumar)
Technical Member

PK