

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

Appeal No. E/1347/2009,2211/2009-2212/2009 - EX[DB]
E/S/1389,2291-2292/2009& E/COD/148-149/2009-EX

Date 28/10/2009

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

To :
M/S SPENTEX INDUSTRIES LTD.
(FORMERLY KNOWN AS INDORAMA TEXTILES LTD.)
PLOT NO. 51-A, INDUSTRIAL AREA,
SECTOR-III, PITHAMPUR, DISTT. DHAR(MP)
M/S SPENTEX INDUSTRIES LTD.

Appellant

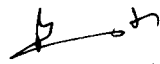
Vs

C.C.E. INDORE

STAY ORDER NO.1056-58/09-EX & MISC ORDER NO.705-706/09-EX Respondent

2009 EX[DB] dated 14-9-09

I am directed to transmit herewith a certified copy of **Final order No. 839-841/**
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. INDORE

MANIK BAGH PALACE, POST BOX NO. 10, INDORE 452001 (M.P.)

2. Adv. / Consult

MR.RAMESH NAIR

LAKSHMI VIHAR, AG- 192, SCHEME NO. 54, VIJAYNAGAR, INDORE(MP)

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), Vaithvaram 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

13. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026

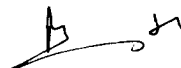
14. Easy Service Tax Online Dot Com Pvt Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15

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

16. Office Copy

17. Guard file

18. HON'BLE PRESIDENT.


Assistant Registrar
(Excise Appeal Branch)

**CUSTOMS EXCISE & SERVICE TAX
APPELLATE TRIBUNAL,**
West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing/decision: 14.9.2009

**Central Excise Appeal No.1347 of 2009
Central Excise Appeals No.2211- 2212 of 2009**

Arising out of the order in original No.05-07/COMMR/CEX/IND/09 dt.19.2.2009 passed by the Commissioner, Customs & Central Excise, Indore.

For Approval and Signature:

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

1	Whether Press Reporter 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 CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
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 Spentex Industries Ltd.

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Appellants/applicants

Vs.

C.C.E., Indore

....

Respondent

Appearance:

Shri Ramesh Nair, Advocate for the appellants/applicants
Shri Virender Singh Chaudhary, Authorized Departmental Representative (SDR) for the Revenue

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

FINAL Oral Order No. 839-841/09-EX

Per Shri Justice R.M.S. Khandeparkar:

Since a common questions of law and facts arise in all these appeals, they were heard together and are being disposed of by this common order.

2. We have heard at length the learned Advocate for the appellants and the learned SDR for the respondent.

3. The appellants challenge the order dated 19.2.2009 passed by the Commissioner, Indore. By the impugned order, while disposing of the

proceedings relating to three show cause notices issued to the appellants , the Commissioner has confirmed the duty liability of the appellants to the tune of Rs.2, 63,65,939/- pursuant to the show cause notice dated 22nd March 2007, duty amount of Rs.64,87,078/- pursuant to the show cause notice dated 22nd March, 2007 and duty amounting to Rs.84,37,985/- pursuant to the show cause notice dated 29th June 2007. The Commissioner has also required the appellants to pay the interest on the said amount in terms of Section 11AB of the Central Excise Act, 1944. Further , penalty has been imposed to the tune of Rs.50 lakhs, Rs.30 lakhs and Rs.40 lakhs respectively in relation to the said show cause notices.

4. The appellants are manufacturer and exporters of synthetic yarn falling under Chapter Headings No.55.09 and 55.01 of the Central Excise Tariff Act, 1985. During the course of scrutiny of ER-1 returns filed by the appellants, it came to the notice of the Department that the appellants had not reversed the credit availed on the Furnace Oil. The furnace oil was one of the inputs used in the manufacture of steam for generation of power which in turn was being used in the manufacture of final product by the appellants. In spite of such failure to reverse the credit of duty till clearance of the final product, the appellants had sought to claim the exemption in terms of the Notification No.30/2004-CE dated 9.7.2004 in relation to the specified goods classifiable under headings No.5509 and 5510. The Notification clearly imposed a condition that the benefit thereunder could not be availed in respect of the goods for which credit of duty on inputs had been taken under Cenvat Credit Rules, 2004.

5. The learned Advocate for the appellants drawing our attention to the Board's Circulars dated 1st February 2007 and 8th November 2007 and placing reliance in the decisions of the Apex Court in the matter of C.C.E., Mumbai I vs. Bombay Dyeing & Mfg. Co. Ltd. reported in 2007 (215) ELT 3 (SC), Chandrapur Magnet Wires (P) Ltd. vs. C.C.E., Nagpur reported in 1996 (81) ELT 3 (SC) as well as of the Allahabad High Court in the case of Hello Minerals Water (P) Ltd. vs. UOI reported in 2004 (174) ELT 422 (All.), submitted that it has been clearly explained by the Board that if the credit is

reversed without utilisation thereof, the benefit under the said notification cannot be denied. According to the learned Advocate for the appellants, the decisions relied upon clearly supports the advice given by the Board under its Circular and applying the same to the facts of the case in hand, the Commissioner could not have denied the benefit available under the said notification to the appellants. He further submitted that the matter relates to the period from March 2006 to February 2007 and the records which were submitted clearly disclosed that the entire credit including the issue on account of the furnace oil was reversed by March 2007, partly being in December, 2006 and partly in March 2007. In relation to other inputs, the credit was reversed at the time of clearance of the final products. Being so, according to the learned Advocate for the appellants it cannot be said that the credit was in any manner utilised by the appellants. The credit having not been utilised by the appellants, the benefit under the said notification could not have been denied.

6. The dispute relates to the denial of benefit under the Notification No.30/2004- CE dated 7th July 2004. In order to enable the assessee to claim the benefit under the said notification, he should refrain himself from taking the credit of duty paid on the inputs which are utilised for manufacture of the final products, in respect of which the exemption is sought to be claimed under the said notification. In the matter in hand, it is not in dispute that the appellants had taken credit of the duty paid on inputs which were utilised for the manufacture of the final product in respect of which the exemption is sought to be availed under the said notification. It is, however, the contention on behalf of the appellants that though initially the credit was sought to be taken, it was reversed at the time of clearance of the final products and even in respect of the furnace oil, the credit was reversed by March, 2007. Merely because, the credit was lying with the appellants till it was reversed, according to the learned Advocate for the appellants, it should not have considered to have been utilised by the appellants so as to deny the benefit of the said notification.

7. The contention in that regard has been sought to be disputed by the learned SDR on behalf of the respondents particularly, referring to the decision of the Supreme Court in Chandrapur Magnet Wires (P) Ltd. case.

8. In Hello Minerals Water (P) Ltd. case, the Allahabad High Court after referring to the decision of the Supreme Court in Chandrapur Magnet Wires (P) Ltd. as well as the decision of the Tribunal had held that the reversal of the credit would entitle the assessee to contend that the assessee had not availed the credit in relation to duty paid on the inputs. The Apex Court in Chandrapur Magnet Wires (P) Ltd., however, had clearly ruled that "Manufacture may take credit of duty paid on inputs used in the manufacture of the final products on which duty will have to be paid. This can be done only if the credit of duty paid on the inputs used in the exempted products is debited in the credit account before removal of the exempted final products". It is pertinent to note that both the rulings in Chandrapur Magnet Wires (P) Ltd. by the Apex Court as well as by the Allahabad High Court in Hello Minerals Water (P) Ltd. were delivered in relation to the matters pertaining to the period prior to incorporation of Rule 57CC in the Central Excise Rules, 1944. The necessity for reversal of the Cenvat credit to avail on the inputs utilised in the final products prior to clearance of the final product, in case of failure to maintain separate accounts of the credit utilised for inputs used in the final products which are subject to payment of duty and those which are duty free ^{or} exempted final product, has been clearly stated in Rule 57CC and is in consonance with the above quoted ruling of the Apex Court in Chandrapur Magnet Wires (P) Ltd.

9. In Bombay Dyeing & Mfg. Co. Ltd. also, the reversal was before the utilisation of the credit i.e. the reversal of credit was prior to clearance of the final products. The relevant portion of the decision in Bombay Dyeing & Mfg. Co. Ltd. reads thus -

"8. There is no merit in this civil appeal. Under the notification, mode of payment has not been prescribed. Further, exemption is given to the final product, namely, grey fabric under the Central Excise Act, 1944, levy is on manufacture but payment is at the time of clearance. Under the Act, payment of duty on yarn had to be at the spindle stage. However, when we come to the Exemption Notification No. 14/2002-C.E., the requirement was that exemption on grey fabrics was admissible subject to the assessee paying duty on yarn

before claiming exemption and subject to the assessee not claiming CENVAT credit before claiming exemption. The question of exemption from payment of duty on grey fabrics arose on satisfaction of the said two conditions. In this case, payment of duty on yarn on deferred basis took place before clearance of grey fabrics on which exemption was claimed. Therefore, payment was made before the stage of exemption. Similarly, on payment of duty on the input (yarn) the assessee got the credit which was never utilized. That before utilization, the entry has been reversed which amounts to not taking credit. Hence, in this case, both the conditions are satisfied. Hence item no. 1 of the table to Notification No. 14/2002-C.E. would apply and accordingly the grey fabrics would attract nil rate of duty."

10. It was however, sought to be contended by the learned Advocate for the appellants that mere taking credit would not amount to utilisation thereof. The concept of Cenvat credit discloses that the amount of duty which is payable to the Government is allowed to be utilised for certain benefits in relation of another duty liability of the assessee. It is the credit which is allowed to be utilised in relation to the amount which belongs to the public exchequer and not to the assessee. Being so, ~~the~~ moment it is disclosed that the amount belonging to the public exchequer is debited by the assessee in his or her favour or under his or her control, with the discretion to be utilised by him or her at his or her sweetwill, it would amount to utilisation thereof by the assessee. Whether the assessee actually utilises the same or not is totally immaterial. Bearing this in mind, once it is disclosed that such credit has been made available for the use thereof by the assessee to discharge certain other duty liability at the time of clearance of the final product which included the inputs in respect of which credit of duty was availed, it would lead to the conclusion that credit was utilised by the assessee. Hence merely because the amount remains idle, it would not lead to the conclusion that there was no utilisation of credit.

11. It is be noted that the similar issue had arisen in the matter of Hind Lamps Ltd. vs. C.C.E., Kanpur in Central Excise Appeal No.146/2005 disposed of on 27.8.2009 wherein after considering the issue in detail, we have held that reversal of the credit has to be prior to the clearance of the final product, otherwise, it would amount to utilisation of credit.

12. For the reasons stated above as well as in the decision dated 27.8.2009 in Central Excise Appeal No.146/2005 in the matter of Hind Lamps

vs. C.C.E., Kanpur, we find no substance in these appeals and the same are hereby dismissed.

(Justice R.M.S. Khandeparkar)
President

(M. Veeraiyan)
Member (Technical)

scd/