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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/503 /2006 - EX[DB]

Date 17/09/2009

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

To :
CCE,JAIPUR-I
NCR,BUILDING STATUE CIRCLE, C- SCHEME,JAIPUR

CCE,JAIPUR-I — Appellant

Vs

SH PANKAJ KUMAR JAIN PROPRIETOR,M/S UME TEXTILE, — Respondent

I am directed to transmit herewith a certified copy of **Final order No. 686 2009 EX[DB]** dated 14-9-09 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent

SH PANKAJ KUMAR JAIN PROPRIETOR,M/S UME TEXTILE,
MUHANA ROAD, OPP RSEB GIRD STATION,SANGANER,DIST JAIPUR(RAJ)

2. Adv. / Consult

NONE

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
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 Kunj, 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
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16 Office Copy
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Assistant Registrar
(Excise Appeal Branch)

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. 503 of 2006

[Arising out of the Order-in-Appeal No. 432 (MPM)/CE/JPR-I/2005 dated 16/11/2005 passed by The Commissioner (Appeals-I), Central Excise, Jaipur.]

CCE, Jaipur — Appellant

Versus

Sh. Pankaj Kumar Jain, Proprietor of M/s Uma Textile] — Respondent

Appearance

Shri S. Chand, Authorized Representative (DR) – for the appellant.

None – for the Respondent.

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

Final Order No. 686/09-EX Dated : ____________

ORDER

Per. D.N. Panda :-

Respondent was not present today therefore we have taken pain to go through the entire matter thoroughly. Learned DR guide us that the Cenvat credit of Rs. 22,718/- (Rupees Twenty Two

Thousand Seven Hundred Eighteen) and Rs. 99,446/- (Rupees Ninety Nine Thousand Four Hundred Forty Six) being governed by Rule 6 of Cenvat Credit Rules 2002 and Rule 16 of Cenvat Excise Rules 2002, any breach of such Rule shall require the assessee to reverse the credit. He precisely submit that so far as the reversal of Cenvat credit of Rs. 22,718/- is concerned, that was called for by revenue for the reason that no input was used for manufacturing dutiable goods as well as exempted goods. When the exempted goods were cleared, it was the duty of the appellant to reverse the Cenvat credit or to pay the duty on the goods so cleared. That not been done. Therefore demand on this count arises.

2. So far as demand of Rs. 99,446/- is concerned, learned DR submits that when the goods came for re-processing, duty paid thereon is permitted to be availed as Cenvat credit considering the same to be input for re-processing and upon re-processing of such goods the outcome of re-process shall be liable to duty, subject to set off of the Cenvat credit availed on the re-processable goods. This is in terms of Rule 16 of the Central Excise Rules, 2002. Shri Sansar Chand learned DR further guides that if there is no adjustment of Cenvat credit permissible under law, appropriate duty shall be charged.

3. With the aforesaid background, we proceeded to examine the facts of the case of the respondent as well as of revenue. Para 2 of the order-in-original throw light about the manner in which learned Adjudicating Authority dealt the matter. But the order is

so cryptic we are unable to understand the different aspects of claim of the credit, permissibility and deniability thereof. Similarly para 9 and 10 of the appellate order is bald.

4. Therefore to do justice to both the sides, it is necessity to send the matter back to learned Adjudicating Authority to test the propose of denial of Cenvat credit on the both counts on the basis of law under Rule 6 of Cenvat Credit Rules 2002 and Rule 16 of the Central Excise Rules 2002. If proper examination is done, facts shall ~~are~~ reveal whether the inputs find place in the records maintained by the respondent and entitled to Cenvat credit or not. Similarly records can ~~be~~ reveal whether Cenvat credit is permissible in respect of the input on the test of use thereof in manufacture. The testing can be made and on the basis of the facts, ~~and~~ law can be applied to the governing facts.

5. With the aforesaid observations, we remand the matter to learned Adjudicating Authority to pass a reasoned and speaking order in respect of his decision. In the result impugned order is set aside and the matter is remanded.

(Dictated and pronounced in open court)

(D.N. Panda)
Judicial Member

(Rakesh Kumar)
Technical Member

PK