

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

Appeal No. E/5113/2004 - EX[DB]

Date 02/12/2009

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

To :
M/S MORDI TEXTILES & PROCESSORS LTD.
MORDI, BANSWARA

M/S MORDI TEXTILES & PROCESSORS LTD.

C.C.E.JAIPUR-II

Appellant

Vs
Respondent

2009 EX[DB] dated 30-11-09

I am directed to transmit herewith a certified copy of Final order No. 1257/
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.JAIPUR-II

N.C.R.BUILDING STATUE CIRCLE C-SCHEME, JAIPUR
302005

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

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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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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)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST
BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
BENCH-DB

Excise Appeal No.E/5113/2004

[Arising out of Order-in-Appeal No.388 (RM)CE/JPR_II/2004 dated 22.6.2004 passed by the Commissioner of Central Excise (Appeals)-II, Jaipur].

Date of Hearing:08.10.2009

Date of decision: 30/11/09

For approval and signature:

Hon'ble Justice RMS Khandeparkar, President
Hon'ble Shri Rakesh Kumar, 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?	
4	Whether Order is to be circulated to the Departmental authorities?	

M/s.Mordi Textiles & Processors Ltd.

...Appellant

Vs.

Commissioner of Central Excise, Jaipur-II

... Respondent

Present for the Appellant : Shri R.K. Hasija, Advocate

Present for the Respondent : Shri M.K. Rastogi, DR

Coram: Hon'ble Justice RMS Khandeparkar, President
Shri Rakesh Kumar, Member (Technical)

FINAL ORDER NO. 1257/09-EX DATED: _____

PER: RAKESH KUMAR

The facts leading to this appeal are, in brief, as under:-

1.1 The appellants in their plant located at Mordi, Banaswara, manufacture processed manmade fabrics of Chapter 52, 54, 55 & 60 and dyed yarn of Chapter 54 & 55 of

the Central Excise Tariff. They took over the entire premises including plant and machinery, from M/s. Purvi Fabrics & Texturisers Pvt. Ltd. (hereinafter referred as M/s.Purvi) w.e.f. 1/8/99. The machinery taken over including three yarn dyeing machines, had been purchased by the previous owner- M/s. Purvi in the year 1998, in respect of which capital goods Modvat Credit under Rule 57Q of the Central Excise Rules, 1944 had been taken and entire capital goods credit including that in respect of the Dyeing machines, had been utilized by M/s. Purvi prior to 1.8.99. The appellant filed a classification declaration No.6/77-2000 effective from 1.3.2000 claiming concessional rate of duty under Notification No. 6/2000-CE dated 1.3.2000 (S.No.133 & 134 of the table annexed to the Notification) in respect of dyed yarn falling under sub-headings 5402.32, 5402.39, 5402.43, 5402.52, 5402.62, 5509.50, 5509.60, 5509.90, 5510.11, 5510.12, 5510.90, 5205.11, 5205.19, 5206.11 and 5206.12 of the Tariff. S.No.133 of the exemption notification provided a concessional rate of duty for the dyed, printed, bleached or mercerized yarn of heading/sub-heading 51.06, 51.07, 5205.11, 5205.19, 5206.11, 5206.12, 5509.19, 5509.21, 5509.22, 5509.31, 5509.32, 5509.41, 5509.42, 5509.50, 5509.60, 5509.90, 5510.11, 5510.12 and 5510.90 of the tariff, produced in a factory not having facility for producing single yarn, subject to condition that the dyed, printed, bleached or mercerized yarn has been manufactured out of duty paid yarn of chapter 51, 52, 54 or 55 of the Tariff and no credit has been availed under Rule 57A or 57B or 57Q of the Central Excise Rules, 1944 in the process of dyeing,

printing, bleaching or mercerizing. Similarly S.No.134 of the exemption notification provided a concessional rate of duty for the dyed, printed, bleached and mercerized yarn of subheading 5402.31, 5402.32, 5402.39, 5402.41, 5402.42, 5402.43, 5402.49 5402.51, 5402.52, 5402.59 and 5402.61 manufactured in a factory not having facilities for producing single yarn, subject to condition that the dyed, printed, bleached or mercerized yarn has been manufactured out of texturised yarn of chap. 54 on which duty has been paid and no credit under Rule 57A, or 57B or 57Q of the Central Excise Rules, 1944 has been availed in the process of dyeing, printing, bleaching, or mercerizing. By amending notification NO.29/2000-CE dated 31.3.2000, the words, letter and figures - "Rule 57A or 57B or B7Q" in the condition No.21 & 22 against S.No.133 & 134 respectively of the exemption notification No.6/2000-CE were substituted by the words, figure & letters - "rule 57AB or 57AK".

1.2. Since during the period from 1.3.2000 to 9.6.2000 the Appellant had availed of the exemption under notification No. 6/2000-CE (S.No. 133 & 134), (the appellant stopped claiming the exemption under this notification w.e.f 10.6.2000), while the Department was of the view that they are not eligible for the same, a SCN dated 27.11.2000 was issued for denying the exemption and demand of allegedly short paid duty amounting to Rs.5,72,527/- and also for imposition of penalty under rule 173Q (1). The Joint Commissioner vide order in original dated 3.10.2001 confirmed the duty demand and also imposed

penalty of Rs.25000/- under Rule 173 Q(1) on the ground that the exemption had been wrongly availed as duty credit under Rule 57Q had been availed in respect of dyeing machinery.

1.3 On appeal, the Commissioner (Appeals) vide order in appeal No.388/04 dated 22.06.04 upheld the duty demand, but set aside the penalty. It is against this order of CCE (Appeals) that the present appeal has been filed.

2. Heard both the sides.

2.1 Shri R.K. Hasija, Advocate, the Id. Counsel for the Appellant, made the following submissions.

- (1) The capital goods, in question, had been purchased by M/s. Purvi from whom the appellant took over the plant & Machinery. The capital goods credit taken by M/s.Purvi had been utilized and consumed before the sale of plant and machinery to the appellant. The appellant neither inherited any capital goods credit from M/s. Purvi, nor availed any capital goods duty credit. Since other conditions of the notification No.6/2000-CE are satisfied and the appellant have not availed any input on capital goods duty credit, they are eligible for the exemption. It is not correct to deny duty exemption to the appellant on the ground that the previous owner - M/s. Purvi had taken and

availed capital goods duty credit in respect of the machinery for dying of yarn.

- (2) With effect from 1.4.2000, the condition for exemption under notification No.6/2000-CE (S.No.133 & 134) was changed from – "no credit under rule 57A or 57B or 57Q of Central Excise Rules, 1944 has been availed in the process of dyeing..... " by – "no credit under Rule 57AB or 57AK of Central Excise Rules, 1944, has been availed in the process of dyeing,----" Thus, with effect from 1.4.2000, the notification NO.6/2000-CE dated 1.3.2000 (S.No.133 & 134) is deniable only if no credit has been availed under Rule 57AB or 57AK. Admittedly, the credit availed by M/s. Purvi was under Rule 57Q, not under Rule 57AB or 57AK. Hence the benefit of this notification is not deniable w.e.f. 1.4.2000.
- (3) Since the assessments for the period from 1.3.2000 to 9.6.2000 have been re-opened by the Department and benefit of notification No.6/2000-CE dated 1.3.2000 (S.No.133 & 134) is sought to be denied, if the benefit of exemption is denied, the appellant would be entitled for input and capital goods duty credit for this period, which has not been taken by them. In this regard, reliance is placed on the judgment of Hon'ble Supreme Court in case of Unichem Laboratories Ltd. vs. CCE, reported in 2002 (145) ELT 502 (SC) and of the Tribunal in case of Kalyani Lemmerz Limited vs. CCE reported in 2002

(150) ELT 755, Polydyne Corporation Vs. CCE reported in 1999 (108) ELT 94 and Mansukh Dyeing & Prtg Mills Vs. CCE reported in 1998 (99) ELT 350.

2.2 Shri M.K. Rastogi, the learned Departmental Representative, reiterating the CCE(Appeals)'s findings in the impugned order in appeal emphasized that -

(i) Since the essence of the condition NO.21 & 22 for S.No.133 & 134 respectively of the table annexed to the notification 6/2000-CE dated 1.3.2000, whether during period prior to 1.4.2000 or w.e.f. 1.4.2000, is that no input or capital goods duty credit should have been availed in the process of dyeing, printing, bleaching or mercerizing in the manufacture of dyed, printed, bleached or mercerized yarn, and since capital goods duty credit in respect of dyeing plants machinery had been taken by M/s. Purvi, the condition for availing concessional rate of duty under this notification has not been fulfilled;

(ii) W.e.f. 1.4.2000, the rule pertaining to modvat credit in Central Excise Rules, 1944, had been rearranged and re-numbered and ~~the~~ condition for availing the exemption had not changed, the Rule 57AB or 57AK have to be read with the old rules 57A or 57B or 57Q and

(iii) this is not a case where the earlier owner M/s. Purvi, while handing over the plant and machinery to the appellant had paid any duty on the capital goods in respect of which duty credit had been availed under Rule 57Q and therefore the machinery for dyeing in the appellant's plant have to be *treated* as the machinery in respect of which capital goods modvat credit had been taken under Rule 57Q.

3. We have carefully considered the submission from both the sides and perused the record. The appellant manufacture processed and man made fabrics of Chapter 52, 54, 55 & 60 and dyed yarn of Chapter 54 & 55 of the tariff. They had taken over the plant and machinery from its previous owner M/s. Purvi w.e.f. 1.8.1999. There is no dispute about the facts that –

(a) M/s. Purvi, the previous owner of the plant and machinery, had taken capital goods duty credit under Rule 57Q of the Central Excise Rules 1944 in respect of dyeing plant and machinery and prior to the taking over the plant and machinery by the present owner – the appellant, had utilized the same fully;

(b) The appellant had neither inherited any modvat credit nor availed any modvat credit in respect of inputs or capital goods, under rule 57A, 57 B and 57Q of the Central Excise

Rules 1944 after taking over the plant from the previous owners and

(c) Even after 31st March, 2000, the appellant have not taken any input duty credit or capital goods duty credit under rule 57AB or 57AK of the Central Excise Rules 1944.

4. The point of dispute is as to whether during the period from 1.3.2000 to 9.6.2000 the appellant are eligible for concessional rate of duty under notification NO.6/2000-CE (Sl.No.133 and 134 of the table annexed to the Notification), in respect of dyed yarn. According to the Department the appellants are not eligible for this exemption as they do not satisfy the condition NO.21. & 22 in respect of the goods covered against Sl.No.133 & 134 respectively of the notification inasmuch as the capital goods duty credit has been availed in respect of dyeing machinery by the previous owner M/s. Purvi.

5. Sl.No.133 & 134 of the table annexed to the Notification No.6/2000-CE prescribe concessional rate of duty in respect of dyed, printed, bleached or mercerized yarn (containing synthetic or artificial staple fibers) whether single, multiple (folded) or cabled and of the headings/sub-headings as specified against these serial numbers, manufactured in factory not having the facilities, plant and equipment for producing single yarn, subject to the conditions as specified against each

of these two sl. Nos. – condition Nos.21 & 22. The conditions subject to which this exemption is available are that –

- (a) Dyed, printed, bleached or mercerized yarn has been manufactured out of yarn on which basic excise duty as well as special excise duty had been paid and
- (b) No credit under rule 57A or 57B & 57Q under the Central Excise Rules 1944 has been availed in the process of dyeing, printing, bleaching or mercerizing in the manufacture of dyed, printed, bleached or mercerized yarn. W.e.f. 1.4.2000 by amending Notification No.29/2000-CE dated 31.3.2000 words, figures and letters – “rule 57A, rule 57B and 57Q in the condition No.21 & 22 were replaced by the words, figures and letter – rule 57AB and rule 57AK”.

6. First contention of the appellant is that it is previous owners M/s. Purvi who had availed the capital goods duty credit under rule 57Q in respect of dyeing plants Machinery and the appellant have neither inherited any credit nor have availed any fresh credit. From the language of the conditions No.21 & 22 it is clear that what is required for concessional rate of duty is that no credit under rule 57 A or 57B or 57Q of Central Excise Rules 1944 has been availed, in the process of dyeing, printing, bleaching or mercerizing in the manufacture of dyed, printed, bleached or mercerized yarn. This is a case where the plant and machinery including the dyeing plant and machinery had been taken over by the appellant from its

previous owner M/s. Purvi and M/s. Purvi had taken capital goods modvat credit in respect of dyeing machinery and had fully utilized the same prior to the taking over of the plant by the appellant. It is not the plea of the appellant that at the time of taking over of the plant by them, the previous owner had reversed the capital goods credit in respect of dyeing machinery as per the provisions of rule 57 S(2) (b) of Central Excise Rules. In view of this, the dyeing machinery in respect of which the previous owner M/s. Purvi had taken the capital goods duty credit and had utilized the same would have to be treated as machinery in respect of which the duty credit under rule 57Q had been availed. Therefore, so far as period from 1.3.2000 to 31.3.2000 is concerned, the appellant do not satisfy the condition of the notification.

7. It has been pleaded by the appellant that at least w.e.f. 1.4.2000 they would be eligible for the exemption, as w.e.f. 1.4.2000 one of the condition for this exemption was that no credit has been availed under 57AB or 57AK, in the process of dyeing, printing, bleaching or mercerizing in the manufacture of dyed, printed, bleached or mercerized yarn, and there is no dispute about the fact that no credit either input duty credit or capital goods duty credit has been availed under rule 57 AB or 57AK of the Central Excise Rules. This plea is also not correct as while w.e.f. 1.4.2000 the provisions relating to Modvat Credit in Central Excise Rules 1944 – 57A to 57U, had been replaced by rules 57AA to 57AK, the basic features of the modvat scheme had been remained the same. The

earlier condition – “no credit has been availed under rule 57A, 57B & 57Q of Central Excise Rules 1944” means that no input duty or capital goods credit either on actual basis or on deemed basis had been availed and the subsequent condition w.e.f. 1.4.2000– “no credit under rule 57AB or 57AK has been availed’ also means the same thing that no input duty or capital goods credit has been taken either on actual basis or on deemed basis. Moreover on going through Rule 57 A, 57B and 57Q of the Central Excise Rules 1944 and Rule 57AB and 57AK of the Central Excise Rules 1944 which existed w.e.f. 1.4.2000, we find that Rule 57 A read with Rule 57 B and 57Q are parimateria with rule 57AB read with Rule 57AK. Thus conditions for exemption in respect of the goods against Sl.No. 133 and 134 of the exemption notification No.6/2000-CE have remained the same even after the amendment of this notification by No.29/2000-CE dated 31.3.2000 and new rule 57AB and 57AK referred to in the amended notification are nothing but re-numbered old rules 57A read with 57B and 57Q. In these circumstances, it is the spirit behind the condition for exemption which is important, not the “words, letters and figures” amended by the amending notification. Since there is no dispute about the fact that capital goods duty credit had been taken and availed in respect of dyeing machinery by M/s. Purvi, the previous owner, the condition regarding nonavailment of credit under rule 57AB or Rule 57AK is not satisfied.

8. In view of the above, we hold that during the entire period of dispute, the appellant was not eligible for concessional rate of duty in respect of dyed yarn under notification No.6/2000-CE (sl. No.133 and 134) and we do not find any infirmity in the impugned order.

9. The appeal is, therefore, dismissed.

(JUSTICE R.M.S. KHANDEPARKAR)
PRESIDEDNT

(RAKESH KUMAR)
MEMBER (TECHNICAL

Anita