TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD

Email : delhi@cestat.gov.in

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

EXCISE APPEAL BRANCH

Appeal No. E/140 /2006-141 /2006 - EX[DB] Date 02/12/2009

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

To :
M/S SYSCHEM (INDIA) LTD.
VILL. BARGODAM, PANCHKULA.

M/S SYSCHEM (INDIA) LTD. Appellant
Vs
C.C.E. PANCHKULA Respondent

I am directed to transmit herewith a certified copy of **Final order No. 1264-1265/ 2009 EX[DB]** dated 20-10-09 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. PANCHKULA
   SCO NO. 407 AND 408, SECTOR 8, PANCHKULA (HARYANA) 134119.
2. Adv. / Consult SH. HEMANT BAJAJ, C/O
   MR.G.S.BHANGOO
   H.NO. 5, SECTOR-10A, CHANDIGARH.
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
15. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
16. Office Copy
17. Guard file

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO.II

E/Appeal No.140-141/2006-Ex(Br)

(Arising out of order in appeal No.362-363/GRM/PCK/05 dated 18.10.05 passed by the Commissioner of Central Excise(Appeals), Gurgaon)

M/s Syschem (India) Ltd — Appellant

Vs

CCE, Panchkula — Respondent

Appeared for the Appellant : Shri Hemant Bajaj, Advocate
Appeared for the Respondent : Shri S.R. Meena, SDR

Coram: **Hon'ble Mr.D.N. Panda, Judicial Member**
Hon'ble Mr. Rakesh Kumar, Technical Member

Date of Hearing: 2.9.09

FINAL Order No. 1264-1265/09-~~09~~ /~~2009~~

Per D.N. Panda:

Learned Counsel Shri Bajaj submits that in both the appeals, there is a common question involved for which there was a common order passed by the learned Commissioner (Appeals) reversing the adjudication order. The appellants being a job worker, claimed before the learned adjudicating authority that it had used certain inputs in the job worked goods and the job worked goods upon being processed were being cleared without payment of duty. That point is not disputed being well evidenced from letter by M/s DSM Anti-Infectives India Pvt Ltd issued on 18.3.2004. A copy of this letter is at page 44 of the Appeal Folder. Learned Adjudicating Authority considering that the job worked goods were not sale but mere exchange/movement of semi-finished goods between raw material supplier and the job worker through challans under Rules and the appellant having already reversed the Modvat credit availed on the raw materials, there shall be no demand of 8% of the total price.

2. Being aggrieved by the decision of the learned Adjudicating Authority, Revenue went in appeal to the learned Commissioner (Appeals) who held that Rule 6(3) of Cenvat Credit Rules, 2002 does not permit the appellant to enjoy cenvat credit in respect of job worked goods being exempted from duty.

3. Learned Counsel Shri Bajaj relies on the following decisions and submits that it is consistent view of the Tribunal that the scheme of Cenvat credit does not prohibit Cenvat credit on input used for manufacture of bulk drugs and drug intermediates ultimately used for manufacture of dutiable goods:-

1) Sterlite Industreis (I) Ltd Vs CCE Pune
   2005 (183) ELT 353 (Tri.LB)

2) Kinetic Engg Ltd Vs CCE Pune III
   2007 (208) ELT 526

3) Shree Uma Foundries Pvt Lgd Vs CCE Kolkata-II
   2008 (222) ELT 317 (Tri- Kol)

4. But learned DR supporting order of the learned Commissioner (Appeals) submits that when the exempted goods were cleared by the appellants, Revenue has not fetched duty. Therefore, the learned Commissioner (Appeals) has rightly decided the issue against the appellant for realization of 8% amount of sales price.

5. Heard both the sides and perused the record.

6.1 Page 4 of the appeal folder clearly brings out the case of the appellants. Use of own input by the appellant in the job worked goods of principal Manufacturer M/s DSM Anti-Infectives India Pvt Ltd is not in dispute. Principal manufacturer has stated in its letter dated 18.3.2004 that for carrying ~~carring~~ out job work, goods were sent to the appellant through challan under Cenvat Credit Rules, 2002 and job worked goods upon receipt having been used in the final goods, such goods were cleared on payment of duty. When this was useful evidence and the appeal was to be considered in the light of the decisions cited by Shri Bajaj as aforesaid, learned Commissioner (Appeals) failed to consider the role of evidence on the entire aspect of the matter in the light of the scheme of Cenvat Credit Rules.

6.2 There is no dispute that the scheme of Cenvat credit is to avoid cascading effect. Intermediate goods manufactured by job work is exempt from duty under Notification No. 214/86-CE dated 25.3.86. Once there is nexus of the job worked goods with the finished goods produced by the principal manufacturer, denial of cenvat credit to the job worker for use of input in the intermediate goods exempt from duty in terms of the above Notification would be unjust if the principal manufacturer has not claimed cenvat credit in respect of inputs of job worker used in the job worked goods of principal manufacturer. However, it is required on the part of the learned Commissioner (Appeals) to conduct an enquiry and examine the record of the principal manufacturer M/s DSM Anti-Infectives India Pvt Ltd and find out whether the job worked goods were properly accounted for at both the ends and whether such job worked goods had undergone the process of manufacture of final product and whether the final output has undergone suffering of excise duty and whether the principal manufacturer has claimed cenvat credit on the inputs of job worker since job worker was exempt from payment of duty.

6.3 Depending on the outcome of enquiry, as stated above, learned Commissioner (Appeals) shall pass an appropriate order. While passing the order, he should not ignore grounds of appeal of Revenue lying in his appeal folder and also the citations made by the learned Counsel as well as governing provisions of Scheme of Cenvat credit.

7. In the result the matter is remanded to the Commissioner (Appeals) for passing a reasoned and speaking order, granting fair opportunity of hearing to the appellants. Thus the impugned order is set aside in both the appeals remanding the matter to lower appellate authority.

(Order dictated and pronounced in the open Court).

(D.N. Panda)
Judicial Member

(Rakesh Kumar)
Technical Member

MPS*

Per Rakesh Kumar

8. While I agree with my learned brother's order remanding this matter to the lower appellate authority for passing a reasoned and speaking order, after conducting inquiry and examining records as mentioned in para 6.2 & 6.3 of the order, there are certain points which have also to be considered by the lower appellate authority.

9. . The Appellant manufacture Pesticides(Technical Grade) using their own duty paid inputs and the same are cleared on payment of duty. They take Cenvat credit of the duty paid inputs received by them for use in the manufacture of pesticides. The Appellant, besides manufacturing pesticides for themselves, also manufacture certain chemicals – Pivaloyl Chloride, Hexa Methyl Di-Silizane(HMDS) and Pyridine Hydrobromide on job work basis for principal manufacturers, out of the raw-material received from them and for manufacture on job work, the Appellant use certain quantity of their own duty paid inputs also - Hydrotromic Acid, Liquid Bromine, Thionyl Chloride, Sulphuric Acid and Hydrochloric Acid. The chemicals manufactured on job work are cleared to the principal manufacturers at nil rate of duty under Notification No.214/86-CE and the principal manufacturers use them for manufacture of finished products – bulk dugs and drug intermediates, which are cleared for home consumption on payment of duty or are exported or cleared to 100% EOUs/EPZ against CT-3 form. The Appellant do not maintain separate account and inventory of the inputs used for manufacture of their own

goods, which are cleared on payment of duty and the inputs used for manufacture of goods on job work basis which are cleared to principal manufacturers at nil rate of duty under Notification No.214/86-CE. There is no dispute that the Appellant had taken Cenvat credit in respect of the common inputs used for manufacture of their own goods as well as for the manufacture of job work goods. The points of dispute are -

(a) Whether the Appellants have reversed the Cenvat credit taken on the quantity of the inputs which have gone into the manufacturer of job work goods cleared at nil rate of duty under Notification No.214/86-CE to the principal manufacturers and also whether the Appellants are required to reverse this credit at all, and

(b) Whether the Appellants are liable to pay, in terms of the provisions of Rule 6(3)(b) of the Cenvat Credit Rules,2002, an amount equal to 8% of the value of the job work goods cleared at nil rate of duty to the principal manufacturer.

10.9 [illegible] That while the Appellant claim that the Cenvat credit taken in respect of inputs used in or in relation to the manufacture of job work goods had been reversed by them, the lower appellate authority has upheld the demand in terms of the provisions of Rule 6(3)(b) read with Rule 6(2) on the ground that they could not satisfy that proportional reversal of Cenvat credit taken on the inputs used for manufacture of job work goods and cleared without payment of duty under Notification

No.214/86-CE had been done. But the Appellate order does not discuss as to on what basis this finding has been arrived at.

11. It is seen that the Appellant, before the lower appellate authority, had cited the judgment of Tribunal in case of Jindal Polymers vs CCE reported in 2001(135)ELT.657 wherein it was held that a job worker need not reverse the credit of duty on his own inputs used on job work when the final product is cleared by the parent manufacturer on payment of duty. This view has been upheld by a Larger Bench of the Tribunal in case of Sterlite Industries(I) Ltd. Vs CCE, Pune, reported in 2005(183)ELT.353. In this case, it was also pleaded that the finished products manufactured by the principal manufacturers out of job-work goods were being cleared on payment of duty and therefore, the Tribunal's judgments in case of Jindal Polymers vs CCE(supra) and Sterlite Industries(I) Ltd. Vs CCE, Pune(supra) are applicable to this case. But the lower appellate authority has not given any finding as to whether these judgments are applicable to the facts of this case.

12. The Commissioner(Appeals) during de-novo decision of this appeal, must, therefore, also give his findings on the points mentioned in para 10 & 11 above.

(Rakesh Kumar)
Member Technical

km