

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

Appeal No. E/191 /2006-192 /2006-SM[BR]

Date 10/01/2008

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

To :
C.C.E. JAIPUR-II
NEW CENTRAL REVENUE BUILDING STATUE CIRCLE, C-SCHEME JAIPUR-302005

C.C.E. JAIPUR-II

M/S GULJAG INDUSTRIES LTD.

Appellant

Vs

Respondent

I am directed to transmit herewith a certified copy of Final order No. 41-42/2008-SM[BR] dated 21.11.2007
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944


Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent

(1-2) M/S GULJAG INDUSTRIES LTD.

VILL-PALRI, KHICHIYAN, JODHPUR (RAJ)

2. Adv. / Consult SHRI. OM PRAKASH AGARWAL
56, SECTION 7, N. P. H. ROAD JODHPUR-343003

3. S.D.R.

4. ~~J.C.D.R.~~

5. Bar association, CESTAT, New Delhi

6. M/s. Deeparchi Publications, M-93, marg. 43, saket, New

7. M/s Centax Publications (P) Ltd., 1512-E, Bhishm Pitamah

8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301

9. R.Venkatraman Constt. 44-B, S.Suncity, Ghaziabad -

10. Nidheshak publications, I.P.Estate, new Delhi

11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh,

12. Co, Law Institution

13. TAX INDIA, B-XI/8183, Vasant Kunj, New Delhi - 110070

14. Office Copy

15. Guard file


Assistant Registrar
(SM Appeal Branch)

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL, R.K. PURAM, W.B. NO.2, PRINCIPAL BENCH
NEW DELHI, COURT NO. III**

Excise Appeal Nos. 191 – 192 of 2006 –SM (BR)

[Arising out of order in appeal No. 597-598(HKS)CE/JPR-II/05 dated 31.10.2005
passed by the Commissioner (Appeals-II) Customs & Central Excise, Jaipur]

Date of Hearing/ Decision: 21.11.2007

For approval and signature:

Hon'ble Mr. P.K. Das, Member (Judicial)

-
1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982. :
 2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? :
 3. Whether Their Lordships wish to see the fair copy of the Order? :
 4. Whether Order is to be circulated to the Departmental authorities? :
-

yes

CCE, Jaipur

Appellants

[[Rep. by Mr. S. L. Meena, Authorized Representative (DR)]

Vs.

Guljag Industries Limited

Respondent
[None]

CORAM: Mr. P.K. Das, Member (Judicial)

Final ORDER No

41-42/08-SM (BR)

Per P.K. Das:

Heard the learned authorized representative (DR) for the Revenue. None appeared on behalf of the respondent. By letter dated 17.11.2007, the learned Chartered Accountant on behalf of the respondent requested for adjournment on the ground that his mother is a cardiac and hypertension patient, is not well. It is contended by the learned Chartered Accountant that he is looking after his mother.

It appears from the said letter that there is no indication of period of adjournment and therefore I find that it is difficult to adjourn the matter for an indefinite period. Accordingly, I proceed to take up the appeal.

2. There are two issues involved in this appeal. The first issue is that the respondents cleared Sulfuric Acid without payment of duty by following procedure prescribed under Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001 "(in short Rules 2001)" and the Revenue demanded payment of amount of 8% of the amount in terms of Rule 6 of Cenvat Credit Rules, 2002. The Adjudicating authority confirmed the demand. The Commissioner (Appeals) allowed the appeal of the respondent. The learned authorized representative (DR) submits that there would be discrimination under Rule 6 of Cenvat Credit Rules, 2002 if the findings of the Commissioner (Appeals) are followed. He submits that the assessee is removing goods by availing exemption notification following the procedure of the Rules 2001 can be a beneficial position as they would not be liable to pay at 8% of amount. But those who are clearing exempted goods without observing the procedure under Rule 2001 liable to pay amount of 8% under Rule 6 of Cenvat Credit Rules. He relied upon the decision of the Hon'ble Supreme Court in the case of CCE, Vadodara vs. Dhiren Chemical Industries reported in 2002 (139) ELT 3 (SC).

3. After hearing the learned authorized representative (DR) and on perusal of the record, I find that the Commissioner (Appeals) set-aside the demand following the decision of the Tribunal in the case of Aurela Chemicals Ltd., vs. CCE, Indore reported in 2004 (175) ELT 148 (Tri.Del). In the said case, the assessee cleared sulphuric acid without payment of duty following the chapter X procedure of erstwhile Central Excise Rules, 1944. It has been held that rule 57CC of the said erstwhile Rules is not applicable in respect of clearance under chapter X procedure, which is neither exempted goods nor chargeable to Nil rate of duty. Relevant portion of the said decision is reproduced below:-

“8. The appellants were clearing the Spent Sulphuric Acid under Chapter X Procedure to various manufacturers of fertilizers against CT-2 Certificate. As per the provisions of Rule 192 of Chapter X Procedure of Central Excise Rules where the Central Government by Notification sanctioned the remission of difference in respect of excisable products used in a specified industrial process any person wishing to obtain remission of duty on such goods, shall make application to the Commissioner stating therein their requirements and purpose and the Commissioner on his satisfaction allowed the appellant to receive the goods on conditions without payment of duty. The obligation is on the receiver of such goods to use the same in a specified industrial process. In case, the goods received under this procedure were not used for specified industrial process, the person who receive the goods is liable to pay the duty hence the goods cleared under Chapter X Procedure are neither exempted nor said to be chargeable to Nil duty.

9. The provisions of Rule 57CC of the Central Excise Rules, provides where a manufacturer is engaged in the manufacture of final product which is chargeable to duty as well as which is exempted from the whole of excise or chargeable to Nil rate of duty and manufacturer is taking credit on the duty paid on inputs used in both type of products is to pay an amount equal to 8% of the price cleared at Nil rate of duty.

10. As discussed above, the goods cleared under Chapter X Procedure are neither exempted goods nor said to be chargeable to Nil rate of duty as the recipient of the goods are duty bound to use these goods for specified purpose and, if, the goods are not used for specified purpose, goods are liable to duty. In this situation, the goods cleared under Chapter X Procedure cannot be said to be exempted from whole of the duty or are chargeable to Nil rate of duty. In view of the above discussion, the impugned order is set aside and the appeal is allowed”.

4. I find thatⁱⁿ the present case sulphuric acid was cleared without payment of duty under Central Excise (Removal of the Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules 2001. It is noted that chapter X procedure under the erstwhile Central Excise Rules, 1944 was withdrawn in 2001 and the Rules 2001 was introduced. Hence, I find that the case of Aureola Chemicals Ltd., (supra) is applicable herein. The learned authorized representative (DR) relied upon the decision of the Hon'ble Supreme Court in the case of Dhiren Chemical Industries which is not applicable herein. The said case relates to the expression in the notification i.e., “on which the appropriate amount of duty of excise has already been paid”. So, I find the first issue is in favour of the respondent and the order of Commissioner (Appeals) in this regard is upheld.

5. Now, the next issue relates to whether cenvat credit reversible in respect of common inputs used in generation of steam, which was further used for generation of electricity sold outside the factory. The learned authorized representative (DR) submits that the Commissioner (Appeals) passed the order following the decision of the Tribunal in the case of Rama Industries Limited vs. CCE, Chandigarh reported in 2004 (178) ELT 720 (Tri-Del.). He further submits that the larger bench of the Tribunal in the case of Rallies India Limited vs. CCE, Salem reported in 2007 (208) ELT 25 (Tri. LB) overruled the decision of the Tribunal in the case of Rama Industries Limited (supra).

6. After hearing the learned authorized representative (DR) and on perusal of the record I agree with the submission of the learned authorized representative (DR). It is seen that the Commissioner (Appeals) observed that steam is a by-product and reversal of cenvat credit is not warranted in this case. In any event, the decision of the Rama Industries Limited relied upon by the Commissioner (Appeals) is overruled by the larger bench of the Tribunal. Therefore, this issue is required to be examined by the Commissioner (Appeals) afresh in the light of the above legal position. Accordingly, I set-aside the impugned order in so far as the reversal of cenvat credit on steam and the matter is remanded back to the Commissioner (Appeals) to decide afresh in accordance with law. Both the appeals are disposed of in the above terms.

(Dictated and pronounced in the open Court)

(P.K. Das)
Member (Judicial)

[Pant]