

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/112 /2006&3858-3859/2005-SM[BR]

Date 11/01/2008

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

To :
CCE JAIPUR-II
NEW CENTRAL REVENUE BLDG.STATUTE CIRCLE,
C SCHEME, JAIPUR

CCE JAIPUR-II

M/S. BHILWARA SPINNERS LTD.

Appellant

Vs

Respondent

I am directed to transmit herewith a certified copy of Final order No. 54-56/2008-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 [2-3] M/S BANSWARA SYNTEX LTD.
M/S. BHILWARA SPINNERS LTD. BANSWARA [RAJASTHAN]
GANDHI NAGAR BHILWARA RAJ.
2. Adv. / Consult SHRI, HEMANT BAJAJ ADV.
N/V.
2. SHRI ATUL GUPTA CO. SECY.
B-1/1289-A, VASANT KUNJ NEW DELHI-70
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. 112 of 2006 & 3858-3859 of 2005 -SM (BR)
[Arising out of order in appeal No. 552(HKSCE/JPR-II/2005 & 543(HKS)
CE/JPR-II/2005 dated 19.10.2005 & 5.10.2005 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? | : | |

CCE, Jaipur-II

Appellants

[[Rep. by Mr. Rajmal, Authorized Representative (DR)]

Vs.

M/s Bhilwara Spinners Ltd.
M/s Banswara Syntex Limited

Respondent

[Rep. by Mr. Hemant Bajaj, Advocate
& Mr. Atul Gupta, Co. Secy.]

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

Final ORDER No. 54-56 / 08-SM(BR)

Per P.K. Das:

The Revenue filed these appeals against order in appeal 552(HKSCE/JPR-II/2005 & 543(HKS) CE/JPR-II/2005 dated 19.10.2005 & 5.10.2005.

2. The relevant facts of the case in brief are that the respondents filed applications for refund of duty under rule 5 of Cenvat Credit Rules, 2004 for refund of the unutilized credit. The adjudicating authority rejected the said claim. Commissioner (Appeals) allowed the claims filed by the respondent. Hence, Revenue filed this appeal.

3. The learned authorized representative on behalf of the Revenue submits that the adjudicating authority rightly rejected the refund claim as the respondent exported the goods under advance licence scheme by which they were procuring duty free material. He further submits that on plain reading of rule 5 of Cenvat Credit Rules, 2004 and Rule 18 of the Central Excise Rules, 2002, it is clear that double benefit shall not be available to the person holding advance licence. He also submits that the respondent is importing duty free material for use in the manufacture of fibre and on the other hand they are exporting the resultant products claiming refund of the cenvat credit on raw material used in the resultant products so exported which amounts to double benefit.

4. The learned Counsels on behalf of the respondents reiterate the finding of the Commissioner (Appeals). They submit that the Notification No.11/2002-CE (NT) dated 01.03.2002 issued under Rule 5 of Cenvat Credit Rules, 2002 imposed the restriction only in respect of drawback claim or claim for rebate under Central Excise Rules, 2002. They further submit that the respondents procured the duty free raw material under the advance licence under replenish scheme and there is no scope to avail double benefit. They relied upon the decision of the Tribunal in the case of Ispat Industries Limited vs. CCE, Nagpur reported in 2006 (195) ELT 37 (Tri. Mumbai).

5. After hearing both the sides and on perusal of the record, it is seen from the adjudication order that when the respondents are procuring the duty free fibre under the advance licence scheme, than the duty paid fibre used in the manufacture of such export goods is to be deemed as duty free fibre and no refund is admissible.

6. Commissioner (Appeals) allowed the claim on the ground that the refund claim filed under Cenvat Credit Rules, 2002, which provides refund of unutilized cenvat credit in respect of export goods. It is observed that the refund of duty is prohibited only where there is claim of rebate of duty under the Central Excise Rules, 2002.

7. Notification No. 11/2002-CE (NT) dated 01.03.2002 issued under Rule 5 of Cenvat Credit Rules, 2002 provides a declaration in the refund claim application that no separate claim for rebate of duties in respect of excisable goods used in the manufacture of the goods covered by this application or will be made under the Customs and Central Excise Duties Drawback Rules 1971 or under claim for rebate under the Central Excise Rules, 2002. The Tribunal in the case of Ispat Industries Limited (supra) held that the appellant is eligible to refund of accumulated cenvat credit of duty paid on the inputs against export goods under DEPB scheme. The relevant portion of the said decision is reproduced below:-

“In the impugned orders, the lower authorities have denied refund of accumulated Cenvat credit of Rs. 1,98,82,260/- to the appellants. The appellants have exported the final products during the period July, 2002 and September, 2002 the shipments were made under the DEPB scheme as evidenced from the export documents. Hence, it is not in doubt that they have not availed of any drawback of the input duty. It is the stated policy of the Govt. to promote exports and the minimum assistance the authorities below can extend is not to cause impediments in implementing clear policies of the Govt. It is no one's case that the exporter should bear the domestic levy on inputs or pass it in turn to the foreign buyer making Indian goods dearer in the foreign market. In the

facts of this case, the appellants are clearly eligible to get refund of accumulated Cenvat credit of duty paid on inputs against exports made. Hence, we allow the appeal with consequential benefit to the appellants".

8. In view of the decision of the Tribunal in the case of Ispat Industries Limited (supra) refund claim under rule 5 of Cenvat Credit Rules cannot be denied unless the assessee claimed drawback or rebate. The contention of the learned authorized representative (DR) that the respondent is getting the double benefit if the refund is allowed, not sustainable for the reason that in this case, respondents are getting the refund of the excise duty which they paid on the raw material used in the manufacture of exported goods. Under the advance licence scheme, the respondents are entitled to get the duty free material. The said duty free material may be replenished towards home consumption and no set off is available to the respondent as cenvat credit for payment of duty on final product which were ultimately cleared in home consumption with payment of duty. Therefore, I do not find any merit in the submission of the learned authorized representative (DR). So, there is no reason to interfere with the order of the Commissioner (Appeals). Accordingly, the appeal filed by the Revenue is rejected.

[Dictated and pronounced in the open in the Court].

(P.K. Das)
Member (Judicial)

[Pant]