

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/3671/2005-3672/2005

Date 24/01/2008

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


To :
(1-2) M/S BSL LTD
POST BOX NO 17, MANDPAM, BHILWARA

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C.C.E JAIPUR

Appellant
Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No.145-146/2008-SM[BR] dated 12.10.2007
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944


Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
C.C.E JAIPUR
NCRB, STATUE CIRCLE, C-SCHEME, JAIPUR
2. Adv. / Consult SHRI. HEMANT BAJAJ ADV.
A-5, BASMENT LAJPAT NAGAR-III NEW DELHI-24
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
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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 Appeals No.3671 and 3672 of 2005-SM (BR)

[Arising out of order in appeal No.449-450(HKS)CE/JPR-II/2005 dated 4.8.2005 passed by the Commissioner (Appeals-II) Central Excise, Jaipur]

Date of Hearing/ Decision:12.10.2007

For approval and signature:

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

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- | | | |
|--|---|----|
| 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? | : | N. |
| 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. B.S.L. Ltd.

Appellants
[Rep. by Mr. Hemant Bajaj, Advocate]

Vs.

CCE, Jaipur

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

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

Final **ORDER NO. 145-46/08-SM(BR)** /Dated:12.10..2007

Per P.K. Das:

Common issue is involved in these appeals and, therefore, both are taken up together for disposal.

2. The relevant facts, in brief, are that the appellants filed refund claims under Rule 5 of Cenvat Credit Rules, 2002 on the ground that they have used duty paid fibre for the manufacture of goods, which were exported under Bond, as they were not in a position to utilize the credit of AED (T&TA) levied on such fibre for discharging the duty liability on the final product cleared in the domestic area. By Notification No.11/2002-CE (NT) dated 1.3.2002, the Central Government directed to allow the refund subject to safeguard, conditions and limitations set out in the Appendix to this Notification. It has been held in the adjudication order that the appellants failed to fulfill the condition of proviso to Clause-2 of the Appendix to the said Notification and, therefore, the refund claims were rejected.

3. The Id. Advocate on behalf of the appellant submits that they have fulfilled the conditions of Rule 5 of the Cenvat Credit Rules, 2004. He further submits that the Appendix of the said Notification provides procedure of filing of the refund claims. He also submits that in this case, there is no overlapping of the claim in the two refund claims filed in a month and, therefore, the rejection of the refund claims for non-fulfilment of the proviso to Clause-2 of the Appendix to the said Notification is unjustified.

He further submits that there is no dispute that the appellants are entitled to get the refund on merits. He relied upon the decision of the Tribunal in the following case laws:-

- (1) A.G. Export Industries Vs. CCE, Bangalore
2007 (212) ELT 421 (Tribunal-Bangalore)
- (2) Home Care (India) Pvt. Ltd. Vs. CCE, Delhi
2007 (72) RLT 678 (CESTAT-Delhi)
- (3) BSL Limited Vs. CCE, Jaipur-II
Final Order No.747/07-SM (BR) dated 30.3.2007

4. Ld. DR on behalf of the Revenue reiterates the findings of the Commissioner (Appeals). He submits that the proviso to Clause-2 of Appendix to the said Notification provides that the appellant is entitled to claim for refund once for each calendar month. Thus, there is a restriction to file the refund claim more than one. So, the Department is justified to reject their claims as two claims^{was} filed in a month.

4. After hearing both the sides and on perusal of the records, I find that the refund claims were rejected for non-observation of the procedure laid down in the Appendix to the ~~same~~^{notification} Notification. It has been observed by the authorities below that the appellants have filed claims twice in a month which is contrary to the conditions, as prescribed in the said notification. It is seen that Rule 5 of the Cenvat Credit Rules provides refund of Cenvat Credit. Notification No.11/2002-CE(NT) dated 1.3.2002, as amended,

prescribes the procedure for refund of Cenvat Credit as conferred by Cenvat Credit Rules, 2002. Initially, there was a dispute as to whether refund is admissible on Additional Excise Duty (T&TA) on exports. This Tribunal in the case of Commissioner of Central Excise Vs. Rohtak Vs. Indo Dane Textile Industries reported in 2007 (213) ELT 117 (Tribunal-Delhi) settled the issue in favour of the assessee. It has been held that the assessee was not debarred for claiming refund of such additional excise duty under Rule 5 of Cenvat Credit Rules 2002. Subsequently, CBEC issued Circular No. Instruction F.No.267/11/2003-CX-8 dated 22.3.2007 clarified that the refund of un-utilized credit of Additional Duty of Excise (T&TA) is eligible under Rule 5 of the Cenvat Credit Rules. According to the Department the appellant can file their refund once in a month but in this case the appellant filed their claim twice in a month. It is seen from the adjudication order that the appellants filed the refund claims for AED (T&TA) lying unutilized in their Cenvat Account on the inputs used in exported goods under Rule 5 of Cenvat Credit Rules, 2002. It appears that the appellants are entitled to refund in terms of Rule 5 of the Cenvat Credit Rules.

5. I agree with the submissions of the ld. Advocate that the Appendix to the said Notification is a procedure in order to safeguard, conditions and limitations of the refund of Cenvat Credit under Rule 5 of Cenvat Credit Rules. There is no dispute to the substantial compliance of the Rule 5 of the

Cenvat Credit Rules. The appellants declared that they have not filed any other claim for refund under Rule 5 to which this claim relates. The Tribunal in the case of A.G. Exports Industries Vs. Commissioner of Central Excise – 2007 (212) ELT 421 (Tribunal-Bangalore) held that so long export of goods and proper taking of Cenvat credit are not in dispute, refund claim cannot be denied for procedural lapses.

7. In view of the above discussion, the impugned orders are set aside and the matters are remanded back to the adjudicating authority to examine the claim as to whether the appellants filed any other claim under Rule 5 to which this claim relates and to pass the order in accordance with law. Needless to say the adjudicating authority shall give opportunity of personal hearing before deciding the matter. The appeals are allowed by way of remand.

(Order dictated & pronounced in open court on 12.10.2007).

(P.K. Das)
Member (Judicial)

Ckp.