

**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/1037/2006

Date 05/02/2008

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

To :  
CCE,JAIPUR-II  
NCRB,STATUE CIRCLE,C-SCHEME,JAIPUR

CCE,JAIPUR-II

M/S BHILWARA PROCESSORS LTD.


Appellant  
Vs  
Respondent

I am directed to transmit herewith a certified copy of Final order No. 255/2008-SM[BR] dated 23.1.2008  
passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

  
Assistant Registrar  
(SM Appeal Branch)

**Copy to :**

1. Respondent  
M/S BHILWARA PROCESSORS LTD.  
POST BOX NO-16,MADAPAM,BHILWARA.
2. Adv. / Consult SHRI. RAVI RAGHAVAN ADV.  
N/V.
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
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10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh,
12. Co. Law Institution
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Assistant Registrar  
(SM Appeal Branch)

**IN THE CUSTOMS, EXCISE & SERVICE  
TAX APPELLATE TRIBUNAL,  
WEST BLOCK NO. 2, R.K. PURAM,  
NEW DELHI**

**COURT -II**

**CENTRAL EXCISE APPEAL No. 1037  
OF 2006-SM**

[Arising out of Order-in-Appeal No. 20(HKS)CE/JPR-II/2006 dated 10.01.2006 passed by the Commissioner (Appeals-II), Customs & Central Excise, Jaipur]

For approval and signature:

Hon'ble Mr. S.S. Kang, Vice President

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 would 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

Appellant

Vs.

M/s. Bhilwara Processors Ltd.,

Respondent

Appearance:

Shri B.S. Suhag, DR, for the appellant,  
Shri Ravi Raghavan, Advocate

Coram:

**Hon'ble Mr. S.S. Kang, Vice President**

**Date of Hearing: 23.1.2008**

FINAL ORDER NO. 255/08-SM(C) dated 23.1.08

**Per S.S. Kang:**

Heard both sides.

2. Revenue has filed this appeal against the impugned order whereby benefit of deemed credit under notification No. 6/2002-CE(NT) dated 1.3.2002 was allowed by relying upon the decision of the Tribunal in the case of Damini Printers (P) Ltd. vs. CCE, reported in 2005 (68) RLT 820 (CESTAT-Del). Contention of the Revenue is that grey fabric which is specified in the notification for the purpose of taking credit is not dutiable, therefore, respondents are not entitled for deemed credit.

3. The respondents are engaged in processing of fabrics and they are getting grey fabric and also availing the benefit of deemed credit under above mentioned notification. Contention of the respondents is that in similar circumstances the Tribunal in the case of Damini Printers (supra) has allowed the benefit of deemed credit under the said notification, therefore, impugned order is rightly passed.

4. I find that the Commissioner (Appeals), after relying upon the decision of the Tribunal in the case of Damini Printers (supra) has allowed the benefit of deemed credit under Notification No. 6/2002-CE. <sup>In the case of Damini Printers</sup> The Tribunal has held as under:-

“We have considered the submissions of both the sides. Rule 11 of the Cenvat Credit Rules, 2002 empowers the Central Government to declare the inputs on which the duty of excise or additional duty of Customs shall be deemed to have been paid at such rate as may be specified in the Notification and to allow Cenvat credit of such duty deemed to have been paid even if the declared inputs are not used directly by the manufacturer of final products declared in the Notification but are contained in the final products. In exercise of the powers conferred by said Rule 11, the Central Government has issued Notification No. 6/2002 (NT) specifying the inputs, and final products for the purpose of allowing the deemed Cenvat credit. A manufacturer other than a composite Mill is eligible to take the deemed credit in respect of specified processed fabrics. The inputs have been specified in the Notification, Tariff Headingwise and all these Headings pertain to yarn or fabrics. In all the Headings mentioned in column meant for inputs refers to fabrics. The contention of the Revenue is that as fabrics have been mentioned in the column of inputs in the table below the Notification, the benefit of deemed credit will not be available to the appellants. The contention of Revenue is not correct as the Notification No. 6/2002 has been issued under Rule 11 of the Cenvat Credit Rules, 2002 which clearly provides that the deemed Modvat credit would be available even if the declared inputs are not used directly by the manufacturer of final products declared in the Notification but are contained in the said final products. It is not in dispute that the fabrics which is processed by the appellants contain yarn which is declared as inputs in the Notification. This view also gets support from the Budget Speech of the Hon'ble Finance Minister, made at the time of presenting the Budget Speech for 1996-97 wherein it was mentioned that the processors would be in a position to Modvat the duty paid on yarn imputed on the basis that yarn accounts for 50% of the value of the finished fabrics. Finance Minister had adopted a simple procedure of imputed value to avoid the imposition of basic duty on grey fabrics being manufactured by thousands of powerlooms. The Board has also clarified vide Circular No. 243/77/96-CX., dated 3.9.1996 that the rate of deemed credit in case of fabrics is in lieu of duty paid on

inputs by the processors. Para 4.5 of the Circular clearly mentioned that deemed credit is in lieu of duty paid on fabrics, yarns, dyes, chemicals, consumables and packaging materials. By issuing Notification No. 6/2002 the Central Government has only declared the inputs and final products in respect of which the deemed credit would be available. The Notification read with Rule 11 makes it very clear that it is not necessary to declare inputs which are used directly by the manufacturer of the final products. What is required for the purpose of being eligible to get the deemed credit is that declared inputs are contained in the final products. What is required for the purpose of being eligible to get the deemed credit is that declared inputs are contained in the final products. It is not the case of the Revenue that the declared inputs i.e. yarn is not contained in the final products. If the contention of the Revenue is accepted, manufacture other than the composite mill will never be eligible to avail the deemed credit under Notification as they will always be bringing only the fabrics whether cotton or man-made for the purpose of processing and column No. 2 of the Notification does not mention any Heading under which fabrics fall. Further Serial No. 2 as well as Serial No. 23 of the Notification No. 6/2002 will be completely redundant as these Serial Nos. provide the facility of deemed credit to the goods manufactured by the manufacturer other than the composite mill.”

As the issue is already covered by the decision of the Tribunal I do not find any infirmity in the impugned order. Appeal is, therefore, dismissed.

(Dictated & pronounced in the Open Court.)

(S.S. KANG)  
VICE PRESIDENT

Dated 24<sup>th</sup> January, 2008

RK