

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/2264/2006-SM[BR]

Date 06/02/2008

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

To :
M/A PBM POLYTEX LIMITED
B-16-19, AKVN GROWTH CENTRE, BORAGAON,
TAH.SAUSAR, DISTT. CHHINDWARA (M.P.)

M/A PBM POLYTEX LIMITED

THE COMMISSIONER OF CENTRAL EXCISE BHOPAL

Appellant
Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No.264 /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

THE COMMISSIONER OF CENTRAL EXCISE BHOPAL
178, BHAGYA BHAWAN, M.P.NAGAR, ZONE-II,
BHOPAL (M.P.)

2. Adv. / Consult

NONE-----

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

COURT -II

EXCISE APPEAL No. 2264 OF 2006-SM

[Arising out of Order-in-Appeal No. 95-CE/BPL/2006 dated 6.04.2006 passed by the Commissioner (Appeals), Central Excise, Customs & Service Tax, Bhopal]

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?	

M/s. PBM Polytex Ltd.,

Appellants

Vs.

CCE, Bhopal

Respondent

Appearance:

None for the appellants,

Shri B.S. Suhag, DR, for the respondent,

Coram:

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

Date of Hearing: 23.1.2008

FINAL ORDER NO. 264/08-SM(CSR) dated 23.1.08

Per S.S. Kang:

Heard learned SDR since the appellants have requested to decide the matter on merit.

2. The appellants filed this appeal against the impugned order whereby credit in respect of capital goods was denied to the appellants on the ground that they were clearing goods without payment of duty under Notification No. 30/2004-CE dated 9.7.2004.

3. Contention of the appellants is that Notification No. 30/2004-CE dated 9.7.2004 provides that nothing contained in this notification shall apply to the goods in respect of which credit of duty on inputs has been taken under the provisions of CENVAT Credit Rules, 2002. Thereafter, a corrigendum was issued to the proviso on 9.7.2004 and the word 'capital goods' is deleted. The contention is that as per provision of notification it is not applicable to the goods in respect of which credit of duty on inputs has been taken. The appellants are not taking any credit in respect of inputs and clearing the goods under notification. Therefore, the denial of credit in respect of capital goods is not sustainable.

4. The contention of the Revenue is that the appellants are manufacturing cotton yarn and were availing benefit of notification which provides exemption from payment of duty in respect of cotton yarn. Contention is that, in case the manufacturer is manufacturing and clearing the goods under notification No. 30/2004-CE, as well as clearing the goods on payment of duty in such circumstances the manufacturer can avail the credit in respect of capital goods, and he is debarred from taking credit in respect of goods used in manufacture of goods cleared under the said notification. The appellants are only manufacturing cotton yarn and clearing the same under notification without payment of duty and as per CENVAT Credit Rules, manufacturer is not entitled for credit on inputs as well as on capital goods in case manufactured goods were cleared without payment of duty. As the capital goods were exclusively used for manufacture of goods, therefore, credit was rightly denied.

5. I find that in this case admitted fact is that the manufacturers are manufacturing and clearing cotton yarn under Notification No. 30/2004-CE and the appellants are not clearing any other goods on payment of duty. As per Rule 6.4 CENVAT Credit Rules, 2002, no Cenvat Credit in respect of capital goods used exclusively in the manufacture of cleared without payment of duty. The contention of the appellants that corrigendum dated 9.7.2004 whereby the word

'capital goods' is deleted will not help the case of the Revenue. As per provision of Notification the manufacturer who is manufacturing and clearing the goods under notification No. 30/2004-CE as well as manufacturing and clearing the goods on payment of duty can avail credit on capital goods. In these circumstances I do not find any reason to interfere with the impugned order. Therefore, the appeal is dismissed.

(Dictated & pronounced in the Open Court.)

(S.S. KANG)
VICE PRESIDENT

Dated 28th January, 2008

RK