

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/1270/2006-SM [BR]

Date 20/02/2008

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

To :
M/S PUNJAB STAINLESS STEEL IND
B-61, WAZIRPUR INDL AREA, N DELHI

M/S PUNJAB STAINLESS STEEL IND

Appellant

CCE DELHI-I

Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No. 320 /2008 –SM [BR] dated 29.1.2008 passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent

CCE DELHI-I

CR BUILDING I P ESTATE N DELHI

2. Adv. / Consult

MR. L. P. ASTHANA ADV.

R-163, SECOND FLOOR GREATER KAILASH PART- I NEW DELHI-110048

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. 1270 OF 2006-SM

[Arising out of Order-in-Appeal No. 171-CE/DLH/2005 dated 17.1.2006 passed by the Commissioner (Appeals), Central Excise, Delhi-I, New Delhi]

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. Punjab Stainless Steel Industries

Appellants

Vs.

CCE, Delhi-I

Respondent

Appearance:

Shri L.P. Asthana, Advocate for the appellants,
Shri B.S. Suhag, DR, for the Revenue

Coram:

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

Date of Hearing: 25.1.2008

FINAL ORDER NO. 320/08-sm(BA) dated 29.1.08

Per S.S. Kang:

Heard both sides.

2. The appellants filed this appeal against the impugned order whereby refund claim of filed by the appellants was rejected.
3. The appellants are engaged in the manufacture of stainless steel utensils and are availing benefit of CENVAT Credit in respect of inputs used in their final product. Stainless steel utensils were exempted from payment of Central Excise duty vide Notification No. 10/2003 dated 1.3.2003. The appellants made export of stainless steel utensils and filed a refund claim in respect of credit availed on inputs used in the manufacture of goods exported. A show cause notice dated 30.8.2004 was issued for denial of credit on the ground that as the exported goods were exempted from payment of duty and the appellants were not entitled for any credit and credit in their CENVAT Credit w.e.f. 1.3.2003 will lapse, hence, no refund. The appellants replied the show cause notice. The adjudicating authority rejected the refund claim. The appellants filed appeal against the adjudication order and the Commissioner (Appeals) in the impugned

order held that the appellants had not followed the procedure, therefore, they are not entitled for refund.

4. Contention of the appellants is that as per proviso to Rule 5 of CENVAT Credit Rules the manufacturer is entitled for refund of Cenvat Credit availed on inputs used in exported goods. It is also submitted that Rule 6 of CENVAT Credit Rules, 2004 provides that the input credit is not available in respect of inputs used in the manufacture of exempted goods. However, this provision is not applicable for goods cleared for export. The appellants also submitted that in CBEC Manual (supplementary) it has been clarified that expression 'export goods' has been used and the same refers to excisable goods (dutiable or exempted) as well as excisable goods. It is also clarified that the benefit of input stage can be claimed on export of all finished goods, whether excisable or not. Contention of the appellants is that in view of the above rules they are entitled for refund in respect of duty paid on inputs used in exported goods.

5. The appellants also submitted that in reply to show cause notice they specifically produced copies of shipping bills and copies of AR E-1, packing list, Bill of lading, bank realization certificate and RG23A form. Contention is that all the documents showing export of the goods already produced before the lower authorities, therefore,

finding of the Commissioner (Appeals) in the impugned order that the appellants have not produced these documents is factually incorrect and is not sustainable. The contention is also that in the show cause notice ground for rejection of refund claim was that as goods were exempted from payment of duty the appellants are not entitled for refund and on the ground that procedure is not followed.

6. Contention of Revenue is that the Commissioner (Appeals) in the impugned order held that proof of export have not been produced and the production of ARE-1 in reply to show cause notice is only an after thought. Therefore, refund was rightly denied. Contention is that onus is on the appellants to prove that the goods in respect of which refund claim has been filed were exported, and the appellant failed to do so, therefore, refund claim was rightly rejected.

7. I find that in this case stainless steel utensils were exempted from payment of duty w.e.f. 1.3.2003. The appellants made export of stainless steel utensils and claimed refund of duty paid on inputs used in exported goods. Show cause notice was issued for rejection of the refund claim on the ground that as the exported goods are exempted no credit is available and the procedure is not followed.

8. I find that Rule 5 of CENVAT Credit Rules, 2004 provides that manufacturer is entitled to utilize CENVAT Credit in respect of inputs used in exported goods for payment of duty on other goods,

and in case he is unable to utilize the credit he is entitled for refund. For ready reference Rule 5 of CENVAT Credit Rules is reproduced below:-

“RULE 5. Refund of CENVAT credit. – Where any input or input service is used in the final products which is cleared for export under bond or letter of undertaking, as the case may be, or used in the intermediate products cleared for export, or used in providing output service which is exported, the CENVAT credit in respect of the input or input service so used shall be allowed to be utilized by the manufacturer or provider of output service towards payment of,

- (i) duty of excise on any final products cleared for home consumption or for export on payment of duty; or
- (ii) service tax on output service,

and where for any reason such adjustment is not possible, the manufacturer shall be allowed refund of such amount subject to such safeguards, conditions and limitations, as may be specified, by the Central Government, by notification:

Provided that no refund of credit shall be allowed if the manufacturer or provider of output service avails of drawback allowed under the Customs and Central Excise Duties Drawback Rules, 1995, or claims a rebate of duty under the Central Excise Rules, 2002, in respect of such duty

Further, I find that Rule 6 of Rules provides that where a manufacturer is manufacturing dutiable and exempted goods both, he has to maintain separate records regarding common inputs used in manufacture of both the goods and the manufacturer is not entitled for credit in respect of inputs used in exempted goods. Sub-rule (v) of Rule 6 further provides that provisions of this rule is not applicable in case of exported goods as the goods is removed without payment of duty and cleared for export.

9. Supplementary Central Excise Manual further clarified that the expression 'export goods used in Central Excise Rules' refers to excisable goods (dutiable or exempted) as well non-excisable goods. It is also clarified that the benefit of input stage rebate can be claimed on exported goods of all finished goods, whether excisable or not. In view of the above provisions of Central Excise Rules which has been clarified in manual a manufacturer is entitled for credit in respect of inputs used in exported goods whether exempted or dutiable. Further, if the goods were dutiable and exported under bond without payment of duty the manufacturer is entitled for refund of duty paid on inputs. In these situation the manufacturer who exported the goods which are exempt from payment of duty cannot be put on disadvantageous position.

10. In respect of finding in the impugned order that proof has not been produced, I find that in reply to show cause notice the appellants filed all the relevant documents such as, copies of shipping bill, duly certified by customs authorities, ARE-1, bank realization certificate, as well as Cenvat account. Therefore, it cannot be said that no proof of export has been produced. In view of the above discussion I find merit in the contention of the appellants. Impugned order is set aside and the appeal is allowed.

(Dictated & pronounced in the Open Court.)

(S.S. KANG)
VICE PRESIDENT

Dated 29th January, 2008

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