

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/450 /2006-SM[BR]

Date 28/03/2008

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

To :
M/S R.K.SILK MILLS INDIA LTD.
E-58,RIICO INDEL AREA KHAIRTHAL,DISTT ALWAR
M/S R.K.SILK MILLS INDIA LTD.

Appellant
Vs
Respondent

CCE,JAIPUR

I am directed to transmit herewith a certified copy of Final order No. 491 /2008 -SM[BR] dated 18.12.2007
passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944


Assistant Registrar

(SM Appeal Branch)

Copy to :

1. Respondent

CCE,JAIPUR

DO

2. Adv. / Consult SHRI ATUL GUPTA CO.SECY.

B-1/1289-A, VASANT KUNJ NEW DELHI-110070

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 No. 450 of 2006 -SM (BR)

[Arising out of order in appeal No. 259(MPM)CE/JPR-I/2005 dated 23.08.2005
passed by the Commissioner (Appeals-I) Customs & Central Excise, Jaipur]

Date of Hearing/ Decision: 18.12.2007

**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 R. K. Silk Mills (India) Limited	Appellant
[Rep. by Mr. Atul Gupta, Co. Secy. for the Appellant]	

Vs.

CCE, Jaipur-I	Respondent
[Rep. by Mr. A.K. Rastogi, Authorised Representative (DR)]	

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

Final ORDER No. 491 / 08-SM (BR)

Per P.K. Das:

The relevant facts of the case in brief are that the duty paid finished goods were returned back to the appellant's factory and duly recorded in their register. They cleared the duty paid returned goods after reprocessing without payment of duty during the period from 1.4.2003 to 5.5.2004. The Central Excise officers during their visit to the appellant's factory noticed the above fact. By letter dated 1.6.2004 the appellant informed ^{that they} had debited the amount of Rs. 3,27,179/- vide

RG-23A Part-II entry serial No. 114 dated 30.05.2004 and also re-credited the amount of Rs., 3,27,046.89 vide entry Sl. No. 120 dated 30.05.2005. It has been alleged that the appellant cleared duty paid returned after processing without payment of duty without following the procedure under Rule 16(1) and 16(2) of Central Excise Rules, 2002. The adjudicating authority confirmed demand of duty and imposed penalty of equal amount alongwith interest which has been upheld by the Commissioner (Appeals).

2. Learned Counsel on behalf of the appellant submits that they are entitled to take credit on the duty paid return goods under Rule 16 of Central Excise Rules, 2002 and they have recorded the entire transaction in the Form-V register. He further submits that the Commissioner (Appeals) agreed that the appellant are entitled to take credit under Rule 16 of the said Rules and therefore credit cannot be denied on procedural lapse as held by the Tribunal in the case of Parke Davis (India) Ltd., vs. CCE, Mumbai-II reported in 2004 (176) ELT 340 (Tri. Mumbai).

3. Learned DR reiterates the finding of the Commissioner (Appeals). He submits that the appellant has not followed the procedure under Rule 16 of the said Rules.

4. After hearing both the sides and on perusal of the records, I find that the Commissioner (Appeals) agreed that the appellants are entitled to avail cenvat credit on the duty paid return goods under Rule 16 of the said Rules. It has been observed by the Commissioner (Appeals) that the appellant has neither availed cenvat credit at the time of receipt duty paid return goods as inputs nor paid the central excise duty at the time of removal of the said re-processed goods, which is against the Central Excise law and amounts to removal of goods without payment of duty. The adjudicating authority observed that the appellant had not followed the procedure under Rule 16 of the Central Excise Rules.

5. Rule 16 provides that credit of duty on goods brought to the factory. The condition of Rule 16 is that the assessee shall state the particulars of such receipt in his record and shall be entitled to take cenvat credit of the duty paid of such goods received under Cenvat Credit Rules, 2002 and utilise the credit according to the said Rules. It is seen from the show cause notice that the appellant recorded the receipt and utilization of the duty paid return goods in their Form-V register. The Tribunal in the case of Parke Davis (India) Ltd., (supra) held that credit cannot be denied on the ground that the appellants had not maintained RG-23A register. It has also been observed that the machinery of a statute should be interpreted so as to promote the object and the purpose of the scheme. Technical reasons for denying substantive benefit is not called for. In the present case, there is no dispute that the appellants received the duty paid return goods at their factory on which they were entitled to take cenvat credit in terms of Rule 16 of Central Excise Rules, 2002. It is also noted that the appellants recorded the transaction in their Form -V register. However, it is required to be examined by the adjudicating authority on the basis of the register and documents. Accordingly, the impugned order is set-aside and the matter is remanded back to the adjudicating authority to verify the documents and register and to pass order in accordance with law. The appeal is allowed by way of remand.

(Order dictated and pronounced in the open Court)

(P.K. Das)
Member (Judicial)

[Pant]