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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/1960/2006-SM[BR] Date 05/06/2008

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

To :
C.C.E. JAIPUR I
N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME,
JAIPUR 302005.

C.C.E. JAIPUR I — Appellant

Vs

M/S RAJASTHAN SPINNING & WEAVING MILLS LTD. — Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 857 /2008-SM[BR] dated 27.5.2008 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 RAJASTHAN SPINNING & WEAVING MILLS LTD.
   KHARIGRAM,GULABPURA,
   BHILWARA.
2. Adv. / Consult SHRI S.VASUDEVAN ADV.
   B-6/10, Safdarjung Enclave
   New Delhi-29
3. S.D.R.
4. ~~J.C.D.R.~~
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017
7. M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12. Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai 60017
13. Taxindiaonline.com Pvt.Ltd, 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. 1960/06-SM

[Arising out of Order-in-Appeal No. 149(HKS)CE/JPR-II/2006 dated 17.03.2006 passed by the Commissioner (Appeals-II), 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?	No
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
3.	Whether their Lordships wish to see the fair copy of the order?	[illegible]
4.	Whether order is to be circulated to the Departmental authorities?	No

CCE, Jaipur-I   Appellant

Vs.

M/s. Rajasthan Spg. & Wvg. Mills Ltd.   Respondents

Appearance:

Shri B.S. Suhag, Departmental Representative, for the Revenue,
Shri S. Vasudevan, Advocate for the respondents

Coram:

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

Date of Hearing: 27th May, 2008

FINAL ORDER NO. 857/08-SM(BR) **dated** 29-5-08

Per S.S. Kang:

Heard both sides.

2. Revenue filed this appeal against impugned order whereby the Commissioner (Appeals) after following the decision of the Tribunal in the case of Amrutanjan Ltd. Vs. CCE, Chennai, reported in 2001 (128) ELT 244 (Tri.-Chennai) had held that second refund application in the same month is permissible and the Commissioner (Appeals) remanded the matter to the adjudicating authority to ascertain whether the said amount of refund claim unutilized during the period.

3. Only contention of the appellant is that as per condition No. 2 of Notification No. 11/2002 dated 1.3.2002 whereby procedure for availing refund of CENVAT Credit in respect of inputs used in or in relation to the manufacture of final product which are cleared for export is prescribed the claim of such refund can be submitted nor more than once in each calendar month.

4. I find that there is no dispute regarding admissibility of refund. Revenue's case is only that the procedure prescribed for refund under notification which allows only one refund claim during a calendar month is not followed. I find this issue is now settled by the Tribunal in the following cases:-

a) Amrutanjan Ltd. Vs. CCE, Chennai, reported in 2001 (128) ELT 244 (Tri.-Chennai);

b) Hotline Teletube & Components Ltd. Vs. CCE, Indore, reported in 1998 (102) ELT 33 (Tribunal)

c) CCE, Ahmedabad vs. Balkrishna Textiles Ltd. , reported in 2005 (192) ELT 912 (Tri.-Mumbai)

In the above cases the Tribunal held that condition of notification in respect of availing refund claim in each calendar month is procedural requirement and not effect the substantial right of refund. In view of the above decisions I find no infirmity in the impugned order. Appeal is dismissed.

(Dictated & pronounced in the Open Court.)

(S.S. KANG)
VICE PRESIDENT

Dated 29th May, 2008-05-29
RK