

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/153 /2007- SM[BR] & E/ CO/ 101 /2007 -SM

Date 05/09/2008

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

To :
C.C.E. CHANDIGARH
PLOT NO.19, SECTOR-17-C, CHANDIGARH
C.C.E. CHANDIGARH

NACHIKETA PAPER LTD.

Appellant
Vs
Respondent

I am directed to transmit herewith a certified copy of **Final order No. 1275 /2008 -SM[BR]** dated 21.8.2008
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944


Assistant Registrar

(SM Appeal Branch)

Copy to :

1. Respondent

NACHIKETA PAPER LTD.

VILL. MUBARIKPUR, DERABASSI (PB)

2. Adv. / Consult SHRI. A.S.GILL ADV.

3355, SECTOR 21-D, CHANDIGARH- 160022

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 Publications (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. Easy Service Tax Online Dot Com Pvt. Ltd. 407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad - 15

15. Office Copy

16. 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. I**

Excise Appeal No. 153 of 2007 & E/CO/101 of 2007-SM

[Arising out of Order-in-Appeal No. 1026/CE/CHD/2006 dated 27.10.2006 passed by the Commissioner (Appeals) Central Excise, Chandigarh]

Date of Hearing/ decision: 21.08.2008

For approval and signature:

Hon'ble Mr. Justice S.N. Jha, President

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982.	Yes
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3	Whether Their Lordships wish to see the fair copy of the Order?	See in
4	Whether Order is to be circulated to the Departmental authorities?	Yes

CCE, Chandigarh

Appellant

Vs.

M/s Nachiketa Paper Limited

Respondent

Appearance:

Mr. R.K. Verma, Departmental Representative for the Appellant

Mr. A.S. Gill, Advocate for the Respondent

CORAM: Mr. Justice S.N. Jha, President

Per S.N. Jha:

final ORDER No 1275/2008/ SM

By the impugned order the Commissioner (Appeals) has set-aside the order of the Deputy Commissioner by which duty demand of Rs. 19,350/- including education cess was confirmed against the respondent appropriating the duty already debited, interest of Rs. 2185/- under Section 11AB of the Act was charged and penalty of equal amount i.e. Rs. 19350/- was imposed.

2. The respondent are engaged in the manufacture of writing and printing paper. On 18.2.2006 the preventive staff of Central Excise Division visited their factory premises and on verification of records found that cenvat credit on M.S. Angles and M.S. Channels to the extent of Rs. 19,350/- had been taken which was not permissible. The authorized signatory of the respondent in his statement under Section 14 of the Central Excise Act stated that the goods in question had been used in the structures inside the factory. The Director further stated that credit on the goods had wrongly been taken under bonafide mistake and undertook that amount will be debited. On 18.2.2006, the amount of Rs.19,350/- was voluntarily debited in RG23A Part-II. However, on receipt of the show cause notice against the proposed appropriation of the amount etc. the appellant took the stand that the goods had been used in the manufacture of parts and accessories of capital goods already installed in the factory. Learned Commissioner in the impugned order noticed the claim of the respondent that they had used the goods in repair and making of parts and accessories of capital goods. He also noticed the rival stand of the Revenue that the parts or accessories in making of which the goods in question had been allegedly used were not specified by the respondent and, therefore, it cannot be said that they were 'inputs' within the meaning of rule 2(k) read with rule 2(a) of the Cenvat Credit Rules, 2004. However, observing that M.S. Angles/ M.S. Channels had admittedly been used in the factory, he set-aside the order of the original authority, referred to above.

3. As the result of this appeal turns on the meaning of the terms 'input' and 'capital goods', their definition in the Cenvat Credit Rules, 2004 may be noticed so far as relevant as under-

“(a) “Capital goods” means:-

(A) the following goods, namely,

- (i) all goods falling under Chapter 82, Chapter 84, Chapter 85, Chapter 90, heading No. 68.02 and sub-heading No. 6801.10 of the First Schedule to the Excise Tariff Act;
- (ii) pollution control equipment;
- (iii) components, spares and accessories of the goods specified at (i) and (ii);
- (iv) moulds and dies, jigs and fixtures;
- (v) refractories and refractory materials;
- (vi) tubes and pipes and fittings thereof; and
- (vii) storage tank

“(k) “input” means-

- (i) all goods, except light diesel oil, high speed diesel oil and motor spirit, commonly known as petrol, used in or in relation to the manufacture of final products whether directly or indirectly and whether contained in the final product or not and includes lubricating oils, greases, cutting oils, coolants, accessories of the final products cleared along with the final product, goods used as paint, or as packing material, or as fuel, or for generation of electricity or steam used in or in relation to manufacture of final products or for any other purpose, within the factory of production;
- (ii)

Explanation 1-.....

Explanation 2- Input include goods used in the manufacture of capital goods which are further used in the factory of the manufacturer;

[emphasis supplied]

4. Learned Counsel for the respondent fairly relied on Explanation 2 to the definition of ‘input’ under clause (a) in terms of which ‘capital goods’ which are further used in factory of the manufacturer are treated as inputs. ‘Capital goods’ includes among other things components, spares and accessories under sub-clause (iii) of rule 2(a)(A). However, in order to qualify as ‘capital goods’ under rule 2(a)(A)(iii), they must be components, spares or accessories of goods specified in clauses (i) and (ii). In other words, components, spares and accessories of all goods irrespective of chapter heading would not qualify as capital goods unless they fall under Chapters 82, 84, 85 or 90 or heading 68.02 or sub-heading

6801.10 of the Tariff. This is clear from the words “of the goods specified at (i) and (ii)” 2 which qualify the words “components, spares and accessories” in sub-clause (iii). The Revenue is therefore right in contending that the respondent had to specify the goods in making of which the M.S. channels /angles were allegedly used.

5. From a plain reading of Explanation 2 to clause (k) and sub-clause (iii) of rule 2(a)(A), it is manifest that unless the goods in question are used in the making of components, spares and accessories of any goods specified in any of the aforesaid four Chapters or heading/sub-heading of the Central Excise Tariff, they would not qualify to be inputs and if that is so, cenvat credit cannot be taken thereon. As mentioned above, at the first opportunity, the stand of the respondent was that M.S. Channels/ Angles had been used (as parts) in the ‘structure’ inside the factory. They later took a different stand that they had been used as parts for manufacture of components, spares and accessories i.e. capital goods within the meaning of rule 2(a)(A)(iii) installed in the factory. The respondent were required to specify the capital goods in making of which M.S. Channels/ Angles were used. As they failed to do so, they had no option but to pay duty which they initially did by allowing the amount to be debited in RG23A Part-II. After the amount was appropriated etc, they challenged the action of the authorities by way of appeal before the Commissioner. The Commissioner not only set-aside the penalty but also the duty demand and appropriation of the amount already debited. That part of the order by which the duty demand was set-aside by the Commissioner must be stuck down.

6. In course of hearing reliance was placed on behalf of the respondent on Ispat Industries Limited vs. CCE, Mumbai -2006 (195) ELT 164 (Tri. Mumbai). It was pointed out that the decision of the Tribunal in Simbhaoli Sugar Mills Limited vs. Commissioner -2001 (135) ELT 1239 (Tribunal) taking a similar view was

upheld by Supreme Court vide 2002 (139) ELT A294 (S.C.). The decisions aforesaid were rendered in their own facts and cannot be cited as precedents in support of the proposition that ~~that~~ even though the goods do not qualify as 'capital goods' within the meaning of rule 2(a)(A)(iii) of the Cenvat Credit Rules, they could be regarded as 'inputs' and credit would be available on them.

7. Coming to the penalty part of the order, I am of the view that the non-payment of duty in the facts and circumstances, does not fall within the parameters of section 11AC of the Act. The respondent might have acted under bonafine belief and interpretation of the relevant rules, and that part of the order of Commissioner setting aside penalty does not warrant any interference by the Tribunal.

8. In the result, the respondent is held liable to duty to the tune of Rs.19,350/- appropriation thereof pursuant to the order of the Deputy Commissioner is therefore held to be in accordance with rules and the order of the Commissioner is to the contrary is set-aside. The appeal is thus allowed in part.

[Dictated and pronounced in the open Court on 21.08.2008]

(Justice S.N. Jha)
President

[Pant]