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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/2582/2006-2583/2006, &2585/2006-SM[BR] E/ CO/284-286/2008 Date 04/09/2008

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

To :
CCE,JAIPUR-II
NCRB, STATUE CIRCLE, C-SCHEME, JAIPUR

CCE,JAIPUR-II — Appellant
Vs
M/S BHILWARA SPINNERO LTD. — Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1279 – 1281 / 2008 –SM[BR] dated 12.8.2008 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
   M/S BHILWARA SPINNERO LTD.
   GHANDINAGAR, BHILWARA
2. Adv. / Consult Shri H. Bajaj Adv.
   N1X
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. 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

2. M/S BHILWARA SPINNERS LTD
GHANDHINAGAR, BHILWARA
3. M/S BHILWARA SPINNER LTD.
GHANDINAGAR, BHILWARA

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

E/CO/284-286/08-SM (BR)
Excise Appeals Nos.2582-2583 & 2585 of 2006-SM (BR)

[Arising out of Order-in-Appeal No.297-298(HKS)CE/JPR-II/2006 dated 3.5.2006 passed by the Commissioner of Central Excise (Appeals), Jaipur]

Date of Hearing/ Decision:12.08.08

For approval and signature:

Hon'ble Mr. P.K. Das, Member (Judicial)

1. Whether Press Reporters may be allowed to see 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? : No
3. Whether Their Lordships wish to see the fair copy of the Order? :
4. Whether Order is to be circulated to the Departmental authorities? : yes

CCE, Jaipur-II ...Appellants
[Rep. by Shri Sansar Chand, DR]

Vs.

M/s. Bhilwara Spinners Ltd. ...Respondent
[Rep. by Shri H. Bajaj, Advocate]

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

Final Order No1279-1280-1281/08............/Dated:12.08.2008

Per P.K. Das:

Both the appeals are arising out of a common order and, therefore, both are being taken up together for disposal.

2. After hearing both the sides and on perusal of the records, it is seen that the Respondent filed refund claim under Rule 5 of Cenvat Credit Rules, 2002 for unutilised credit. The Adjudicating Authority sanctioned the refund claims. Revenue filed appeal before the Commissioner (Appeals), which was rejected. Hence, Revenue filed this appeal.

3. The main contention of the Revenue is that the respondent exported the goods under Advance Licence Scheme by which they were procuring duty free materials. It is further contended that the Respondent is importing duty free materials for use in the manufacture of fibres and on the other hand, they are exporting the resultant products claiming refund of the Cenvat credit on the raw materials used in the resultant products so exported which means to double benefit. I find that the Tribunal in the Appellants' own case rejected the Revenue appeal vide Final Order No.54-56/08-SM (BR) dated 21.11.2007 (CCE, Jaipur Vs. M/s. Bhilwara Spinners Ltd.) and followed the decision of the Tribunal in the case of Ispat Industries Ltd. Vs. CCE, Nagpur reported in 2006 (195) ELT 37 (T-M). The relevant portion of the said decision is reproduced below:-

> 6. Commissioner (Appeals) allowed the claim on the ground that the refund claim filed under Cenvat Credit Rules, 2002, which provides refund of unutilized cenvat credit in respect of export goods. It is observed that the refund of duty is prohibited only where there is claim of rebate of duty under the Central Excise Rules, 2002.

7. Notification No. 11/2002-CE (NT) dated 01.03.2002 issued under Rule 5 of Cenvat Credit Rules, 2002 provides a declaration in the refund claim application that no separate claim for rebate of duties in respect of excisable goods used in the manufacture of the goods covered by this application or will be made under the Customs and Central Excise Duties Drawback Rules 1971 or under claim for rebate under the Central Excise Rules, 2002. The Tribunal in the case of Ispat Industries Limited (supra) held that the appellant is eligible to refund of accumulated cenvat credit of duty paid on the inputs against export goods under DEPB scheme. The relevant portion of the said decision is reproduced below:-

> "In the impugned orders, the lower authorities have denied refund of accumulated Cenvat credit of Rs. 1,98,82,260/- to the appellants. The appellants have exported the final products during the period July, 2002 and September, 2002 the shipments were made under the DEPB scheme as evidenced from the export documents. Hence, it is not in doubt that they have not availed of any drawback of the input duty. It is the stated policy of the Govt. to promote exports and the minimum assistance the authorities below can extend is not to cause impediments in implementing clear policies of the Govt. It is no one's case that the exporter should bear the domestic levy on inputs or pass it in turn to the foreign buyer making Indian goods dearer in the foreign market. In the facts of this case, the appellants are clearly eligible to get refund of accumulated Cenvat credit of duty paid on inputs against exports made. Hence, we allow the appeal with consequential benefit to the appellants".

8. In view of the decision of the Tribunal in the case of Ispat Industries Limited (supra) refund claim under rule 5 of Cenvat Credit Rules cannot be denied unless the assessee claimed drawback or rebate. The contention of the learned authorized representative (DR) that the respondent is getting the double benefit if the refund is allowed, not sustainable for the reason that in this case, respondents are getting the refund of the excise duty which they paid on the raw material used in the manufacture of exported goods. Under the advance licence scheme, the respondents are entitled to get the duty free material. The said duty free material may be replenished towards home consumption and no set off is available to the respondent as cenvat credit for payment of duty on final product which were ultimately cleared in home consumption with payment of duty. Therefore, I do not find any merit in the submission of the learned authorized representative (DR). So, there is no reason to interfere with the order of the Commissioner (Appeals). Accordingly, the appeal filed by the Revenue is rejected.

4. In view of the above decision, I do not find any infirmity in the order of the Commissioner (Appeals). Accordingly, the appeals filed by the Revenue are rejected.

Order dictated & pronounced in open court on 12.08.08.

(P.K. Das)
Member (Judicial)

Ckp.